

Regular Meeting

The regular meeting of the City Council of the City of Fitchburg was held in the Memorial Middle School Auditorium, 615 Rollstone St., Fitchburg, on May 1, 2018. The meeting was called to order by President Michael Kushmerek at 7:22 P.M. The Clerk called the roll and eleven (11) Councillors were present. The meeting opened with a salute to the Flag led by Councillor Clark.

For the Record

Noted for the record:

FATV was recording the audio and video of the meeting.

Public Forum

**PUBLIC FORUM**

Mr. Jay Bry, FSU Vice President spoke regarding tabled Ordinance 31-18. He asked the City Council to allow for further discussion on the allowable boundaries of retail marijuana establishments and the proximity to the university campus. He stated that because the university receives federal funds marijuana is still an illegal substance on campus.

Records

**REPORT OF COMMITTEE ON RECORDS**

The Committee on records reported the minutes of the Regular Meeting of April 17, 2018 were correctly recorded. Report accepted and minutes adopted.

Communication  
His Honor the Mayor

**COMMUNICATION FROM HIS HONOR THE MAYOR**

Re-Appointment Letter

Re-Appointment  
Letter

1. Ms. Ellen Hughes, to the Board of Registrars of Voters for a term to expire April 1, 2021.



*The City of Fitchburg*  
FITCHBURG CITY CLERK  
*Massachusetts*  
2018 APR 24 PM 1:22  
OFFICE OF THE MAYOR

**STEPHEN L. DINATALE**  
MAYOR  
166 BOULDER DRIVE  
FITCHBURG, MA 01420  
TEL. (978) 829-1801

**AARON TOURIGNY**  
CHIEF OF STAFF  
ATOURIGNY@FITCHBURGMA.GOV  
**JOAN DAVID**  
ADMINISTRATIVE AIDE  
JDAVID@FITCHBURGMA.GOV

April 23, 2018

The Honorable City Council  
Fitchburg Municipal Offices  
166 Boulder Drive, Suite 108  
Fitchburg, MA 01420

Dear Honorable Councilors,

I hereby re-appoint and ask for your confirmation of Mrs. Ellen Hughes of 15 Haskell St., Fitchburg, to the Board of Registrars of Voters for a term scheduled to expire on April 1, 2021.

Please feel free to contact me with any questions.

Sincerely,

Stephen L. DiNatale  
Mayor

*City of Fitchburg*, May 1, 2018

Appointment Letter

1. Mr. Ismael Sanchez, as a Student Police Officer for the City of Fitchburg, to be effective on June 4, 2018.

Communication  
His Honor the Mayor  
Appointment  
Letter



*The City of Fitchburg*  
FITCHBURG CITY CLERK  
*Massachusetts*  
APR 24 PM 1:22  
OFFICE OF THE MAYOR

**STEPHEN L. DINATALE**  
MAYOR

166 BOULDER DRIVE  
FITCHBURG, MA 01420  
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April 23, 2018

The Honorable City Council  
Fitchburg Municipal Offices  
166 Boulder Drive, Suite 108  
Fitchburg, MA 01420

Dear Honorable Councilors,

I hereby appoint and ask for your confirmation of Ismael Sanchez of 193 Woodland St., Fitchburg MA as a Student Police Officer for the City of Fitchburg.

Mr. Sanchez is registered to attend the Massachusetts Municipal Police Training Committee at the Reading Police Academy on June 4, 2018. Therefore, this appointment will be effective on June 4, 2018.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen L. DiNatale".  
Stephen L. DiNatale  
Mayor

Appointments read and referred to the Appointments Committee.

Special Presentation

**SPECIAL PRESENTATION**

Ralph Baker & Janet Morrison  
Fitchburg Green Way Committee  
Re: Rock Walk

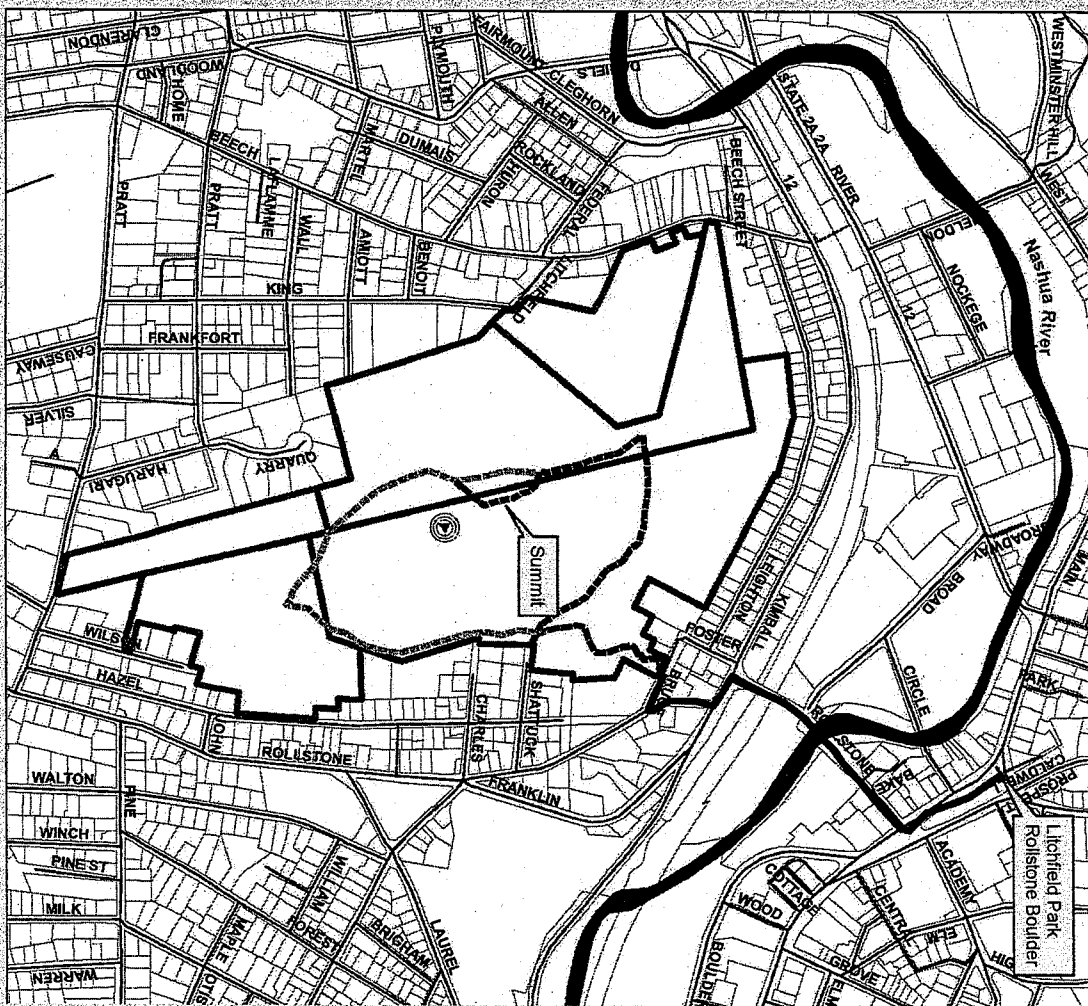
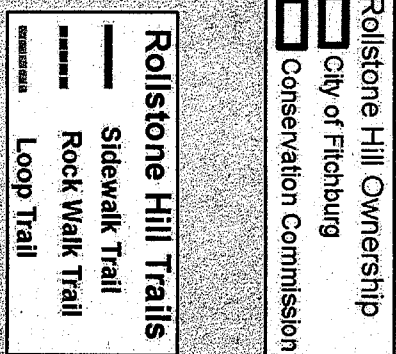
Ms. Janet Morrison, Mr. Dick O'Brien and Mr. Peter Capodagli addressed the Council with proposed plans for The Rock Walk - Rollstone Hill trail plan. The following presentation was provided:

Rollstone Hill  
Trail Plan

“ROCK WALK TRAIL”

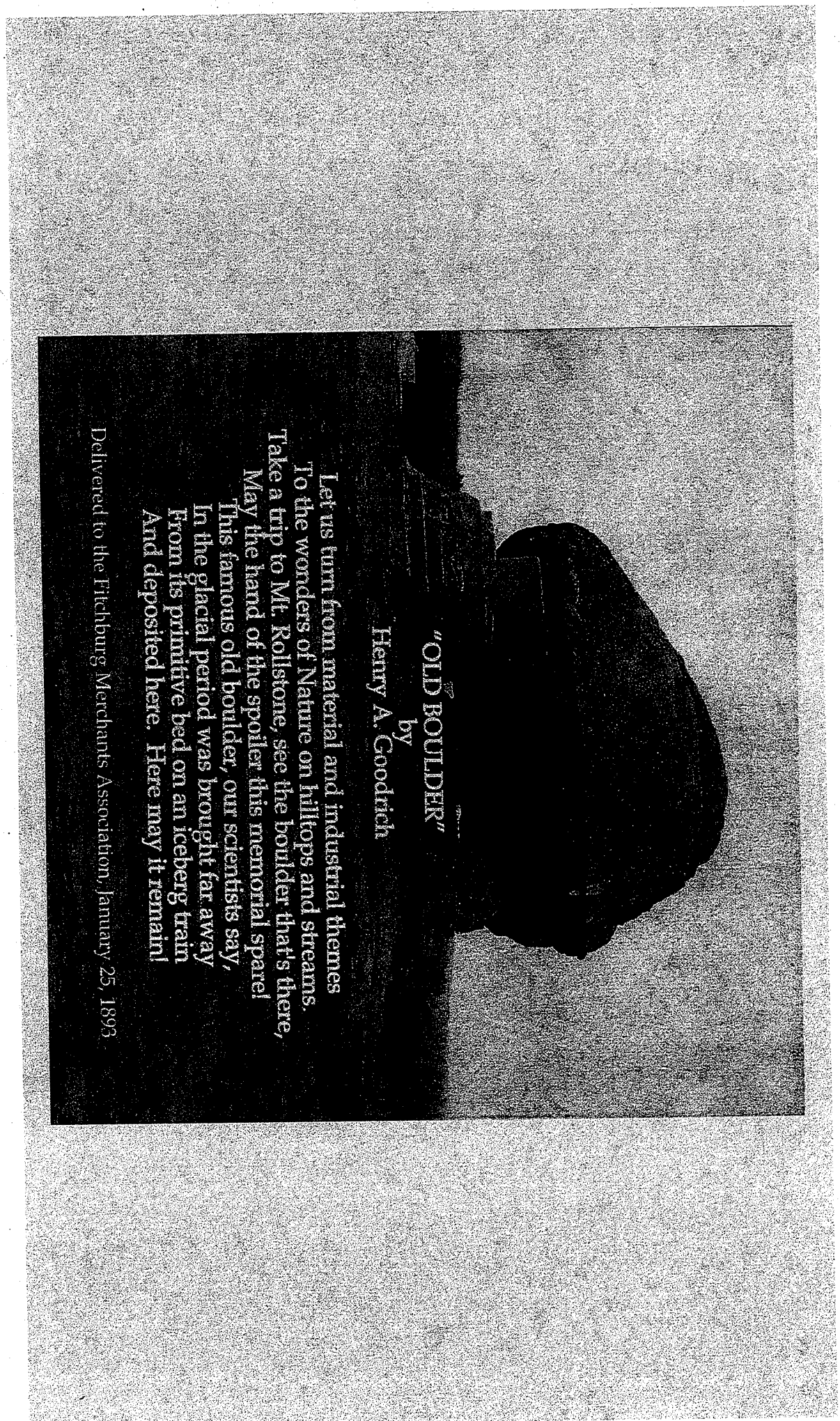
# Rollstone Hill

94 Acres owned by the  
City of Fitchburg





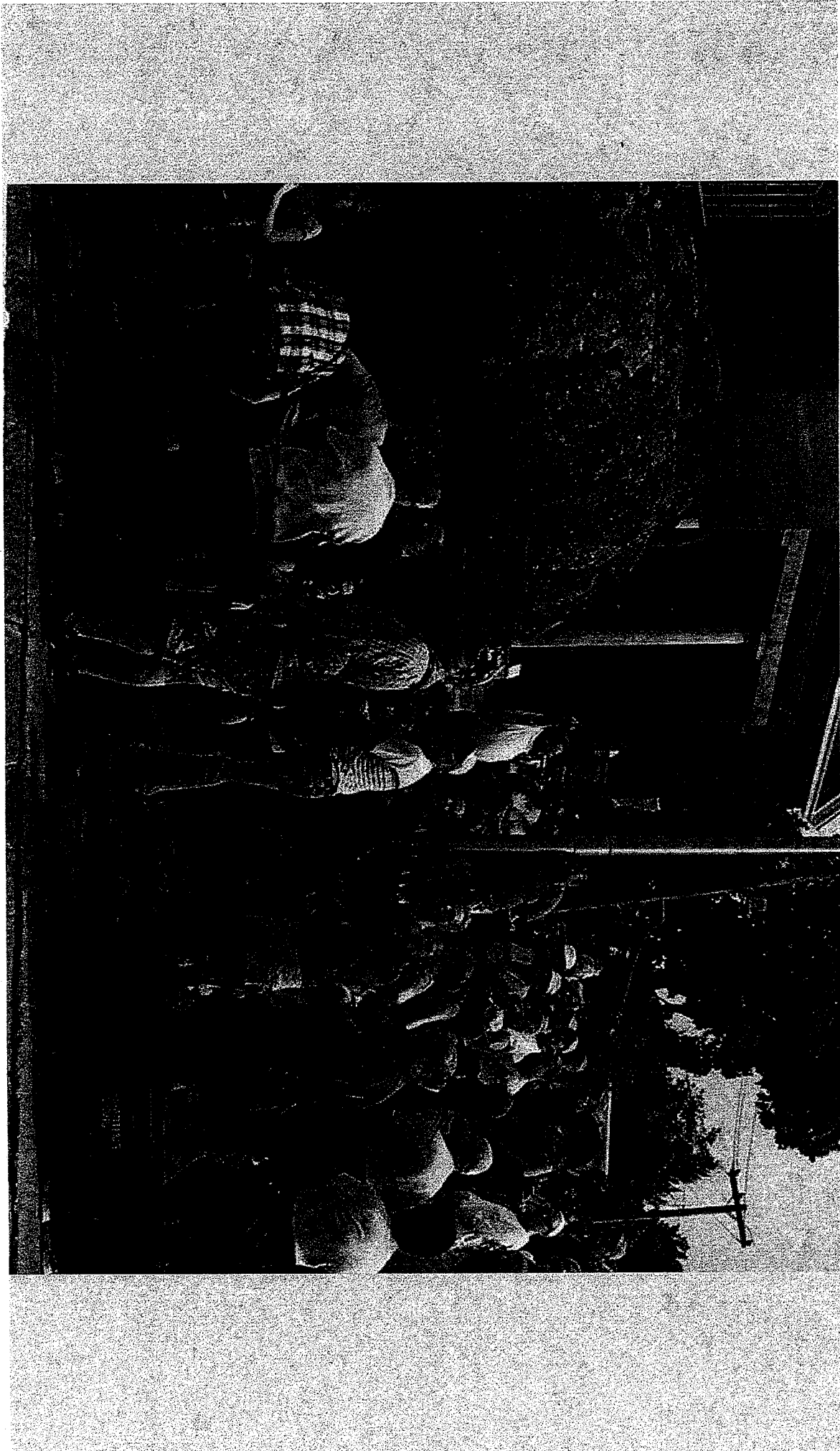
Special Presentation



*City of Fitchburg,*

May 1, 2018

Special Presentation



**ROCK WALK TRAIL**

**POINTS OF INTEREST**

- 1) The Joseph A. Battles House
- 2) The Litchfield House
- 3) The Boulder in Litchfield Park
- 4) The First Parish Church
- 5) The Sculpture of Henry H. Adams (Boys & Turtles, Winged Victory)
- 6) The Upper Common
- 7) The Norcross House
- 8) Debonis and Davin (First Church, Oldest Building)
- 9) Crocker Field
- 10) The Faith United Church
- 11) The Swedish Church
- 12) The Nashua River
- 13) The Parker Bowstring Truss Bridge
- 14) The Fitchburg Railroad (Alvah Crocker)
- 15) Lunenburg Academy
- 16) Saima Hall
- 17) German Church
- 18) The Flora and Fauna of Rollstone Hill
- 19) How Did Rollstone Hill Get Its Name
- 20) The Rocks and Minerals of Rollstone Hill
- 21) History of Painting "The Rock"
- 22) The Granite Quarries
- 23) The View From Rollstone Hill
- 24) The Graffiti of Rollstone Hill
- 25) Building With Rollstone Granite
- 26) Cultural and Ethnic Connections to Rollstone Hill
- 27) The Boulder on the Summit





**TASK:** CREATING A SUSTAINABLE AND ACCESSIBLE TRAIL FOR FITCHBURG

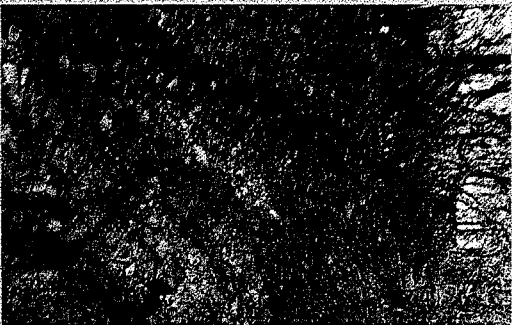
A SUSTAINABLE TRAIL IS ONE THAT MINIMIZES THE IMPACT TO THE SITE & MINIMIZES THE \$, TIME, EFFORT TO MAINTAIN THE TRAIL. STRIVE FOR A RUNNING GRADE OF >10% AND A CROSS GRADE OF 3-5%.

AN ACCESSIBLE TRAIL IS ONE THAT PRODUCES AN ENJOYABLE EXPERIENCE FOR YOUR INTENDED USER GROUPS BY ELIMINATING TREAD AND CORRIDOR OBSTRUCTIONS.

WATER MANAGEMENT IS THE #1 CRITERIA IN A SUSTAINABLE TRAIL; USE OF A ROLLING CONTOUR DESIGN VS. FALL LINE TRAIL, YOU MINIMIZE THE EROSION ISSUES.



BEFORE



AFTER



# HISTORIC ROLLSTONE HILL QUARRY & ROCK WALK TRAIL

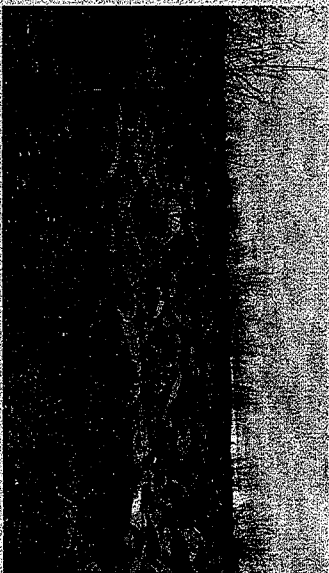
RE-WORKING AN EXISTING TRAIL HAS ++'S  
& --'S.

RECONSTRUCTION CAN OFTEN COST MORE  
THAN NEW CONSTRUCTION BECAUSE OF  
THE NEED TO REPAIR DAMAGE TO SITE.

CAN ALSO ELIMINATE CONSTRUCTION COSTS  
ON PORTIONS OF TRAIL THAT ARE ALREADY  
SUSTAINABLE AND ACCESSIBLE!

THAT IS THE CASE WITH THE CURRENT ROCK  
WALK TRAIL. IN ORDER TO MAKE IT AS  
SUSTAINABLE AND ACCESSIBLE FOR AS  
MANY USERS AS POSSIBLE, IT WILL REQUIRE  
SOME RE-ROUTING AND SOME TRAIL  
CLOSURES TRAIL.

REPLACING FALL LINE SECTIONS WITH  
SWITCHBACKS, INSTALLING GRADE  
REVERSALS AND WATER DIPS, HARDENING  
OFF SECTIONS OF THE TRAIL AND CREATING  
STONE STAIRS WHERE NEEDED!



Lots of stone to work with!



Several stone staircases needed!



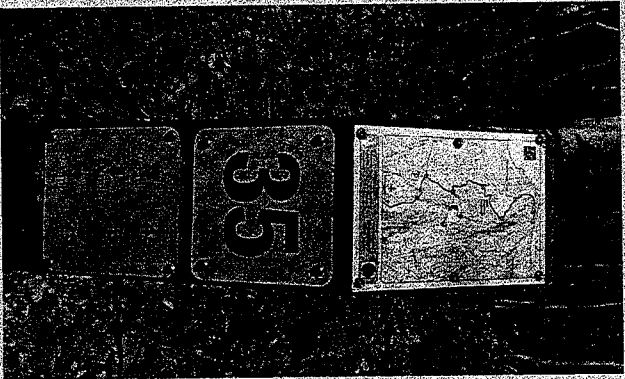
Old cart road to restore



Parking Area to create!

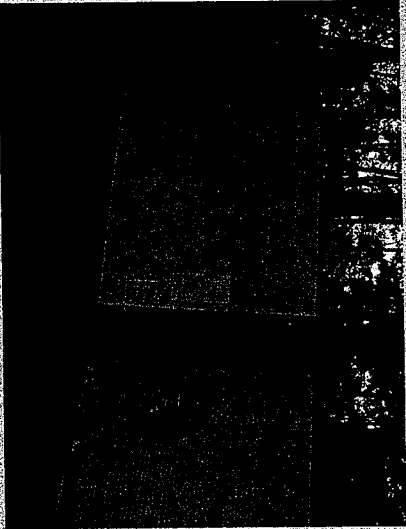


**WAY-FINDING & INTERPRETIVE SIGNAGE**  
**A KEY INGREDIENT TO AN ENJOYABLE TRAIL EXPERIENCE.** Good signage on a trail is like good food at an event!




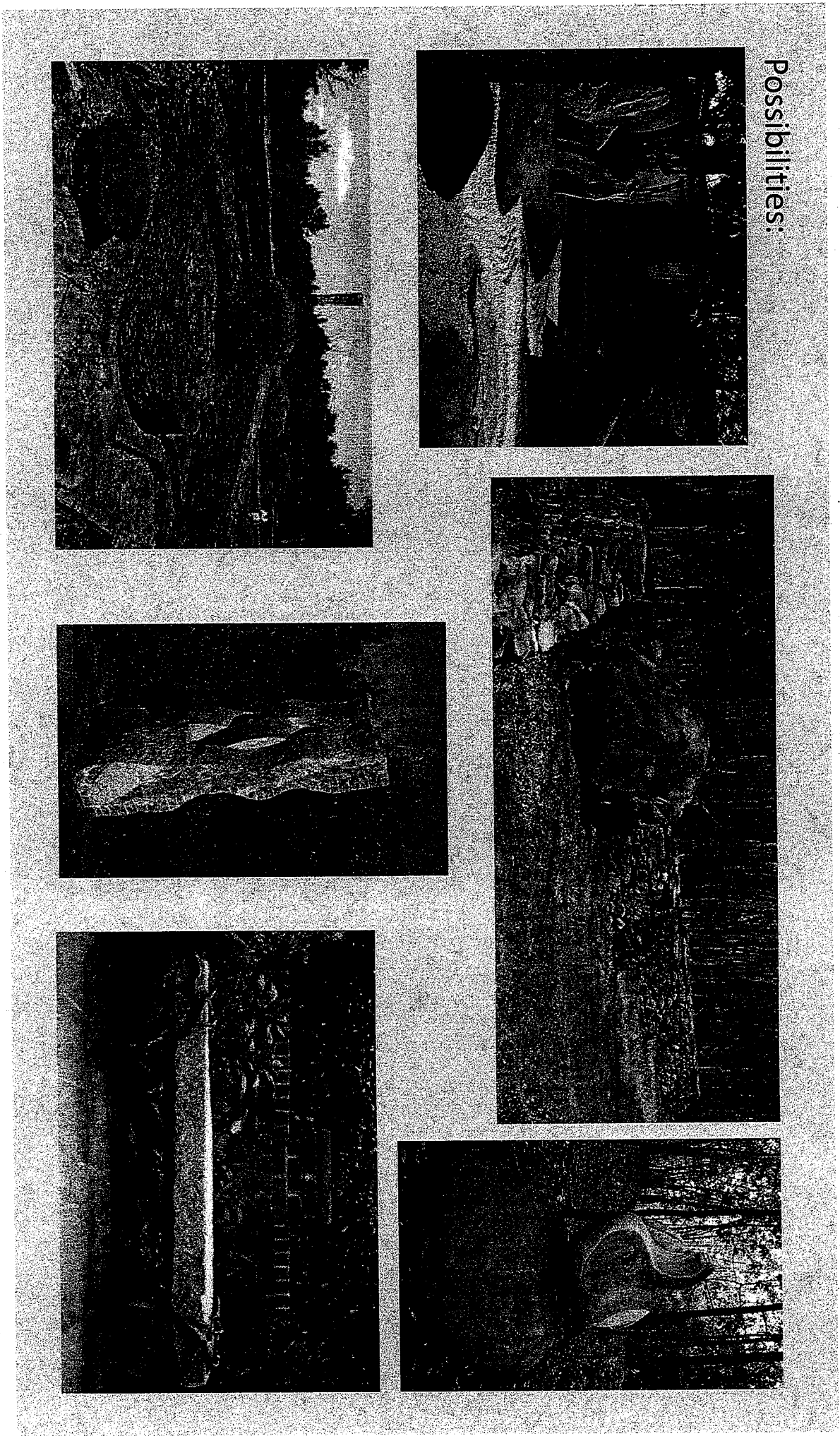
**Way-finding Sign** with trail map, Intersection # and directional arrows and mileage markers

Trailhead kiosk with trail map and other information.



Custom Natural History Interpretive Sign







Funding Sources for Trails/Parks			
State Grant Programs	Federal Grant Programs	Foundations/ Other	
Recreational Trails Grant Program \$100,000 Maximum 20% Cost Share (In Kind)	Land and Water Conservation Fund \$200,000 Maximum 50% Cost Share (Cash)	Community Foundation of North Central Mass. \$30,000 Maximum Cost Share not required	
PARC Grant Program \$400,000 Maximum 30% Cost Share (Cash)	NPS Rivers, Trails & Conservation Assistance Technical Assistance	Student Conservation Association 5 Member Trail Crew 10 Day "Hitch" \$8,000/Hitch	
Massachusetts Cultural Council Fitchburg Cultural Council \$26,900 Total Allocation		Private Fundraising Establish Fund at CFNCM Donor Recognition Program	

# Grants Submitted/Awarded

## Recreational Trails Grant Program

### Construction of Trail - Phase I (Submitted)

- FY2019 Application
- \$100,000 Grant Request
- Grant Budget
  - Labor/Equipment \$ 36,000
  - Labor – SCA Crew \$ 24,000
  - Volunteer Labor \$ 9,500
  - Materials/Signs \$ 40,000
  - City DPW/ Administrative \$ 3,500
  - City DPW/ Equipment \$ 17,500

## Community Foundation of North Central Mass.

### Rollstone Hill Trail Plan (Awarded)

- FY2018 Application
- \$5,000 Grant Request
- Contract awarded to Conservation Works LLC
- Trail Plan completed January 2018

### Rollstone Hill Trail Construction (Round 2)

- FY2019 Application
- \$25,000 Grant Request
- Grant Budget
  - DPW/Labor/Equipment \$10,000
  - Labor – SCA Crews \$16,000
  - Construction Supervisor \$ 2,500



# Grants for Plan Phases II and III

## Recreational Trail Program *Phase II – Trail Enhancements*

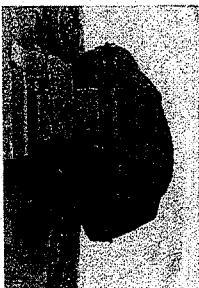
- Side Trail Connections to Neighborhoods
- Trail Head Improvements
- Benches
- Interpretive Signs/Maps

## PARC Grant Program *Phase III – Rollstone Hill Park*

- Vista Improvements
- Pocket Gardens/Walkways
- Native Plantings
- Maps/Interpretive Signs
- Trail head/Parking Improvements

**"Rock Walk"**  
Saturday May 19, 2018  
10:00 AM - 1:00 PM  
Boulder Art Gallery

**Spring "Rock Walk" Saturday, May 19th**



Join us for a slow and easy, comfortable, and extraordinary scenic, two mile walk to the summit of Rollstone Hill. The story and history of the Rollstone Boulder, the quarries, and several other interesting sites along the way will be explored, and the historical and cultural influence they had on our city will be discussed.

Date: Saturday, May 19th, 2018

Rain Date: Sunday, May 20th, 2018

Time: 10:00 AM - 1:00 PM

Address: Walk will start at the Boulder Art Gallery, 960 Main Street, Fitchburg, MA

**Special Instructions:** Wear comfortable walking shoes, bring water, a friend, and don't forget your camera! This is a FREE event!



**Contributing Partners**





Reports of  
CommitteesAppointments  
CommitteeCity Property  
Committee

## REPORTS OF COMMITTEES

Appointments Committee Oral Report  
Meeting of May 1, 2018

The Appointments Committee recommended the following  
Appointments be confirmed:

New Appointments:Fitchburg Disability Commission

(Term to expire March 1, 2019)

Ms. Deanna Tardiff

Water/Wastewater Commission

(Term to expire April 1, 2022)

Mr. Joshua Bedarian

Report accepted. Appointments confirmed by unanimous vote. 11  
members present. Board consists of 11 members.

The Appointments Committee recommended the following Appointment  
be confirmed:

Permanent Full time FirefighterCity of Fitchburg

Connor Griffin

Report accepted. Appointment confirmed by unanimous vote. 11  
members present. Board consists of 11 members.

Upon confirmation, Appointee was sworn in by the City Clerk.

City Property Committee Oral Report  
Meeting of May 1, 2018

The City Property Committee recommended the following Petition  
be Granted:

- 115-17. City of Fitchburg Planning Board, to rename the  
portion of Westminster Hill Road from Industrial Road  
easterly to the "Game On" property boundary as  
outlined in the enclosed petition.

## REPORT

The Committee on  
City Property Committee

to which was referred this petition recom-  
mend that the petition be granted, be given  
leave to withdraw

*Anna M. Farrell*  
*John J. O'Hara*  
*Amy Green*  
*Andrew J. Farrell*

In City Council

May 1, 2018

Report accepted. Petition granted  
with street name to be determined  
to be "Game On Way".

11 members present. Board consists  
of 11 members.

Anna M. Farrell

Clerk

No. 115 - 2017

## PETITION

of

City of Fitchburg Planning Board

to

Rename the portion of Westminster Hill Road  
from Industrial Road easterly to the "Game  
On" property boundary. Street name TBD.

*Game On Way*

In City Council

May 2, 2017

Referred to Committee on

Anna M. Farrell, Clerk

FITCHBURG CITY CLERK

TO THE HONORABLE CITY  
COUNCIL OF THE CITY OF  
FITCHBURG

Ladies and Gentlemen:

The undersigned Petition your Honorable Body to

Ladies and Gentlemen:

The undersigned Petition your  
Honorable Body to rename the portion  
of Westminster Hill Road from  
Industrial Road easterly to the "Game  
On" property boundary.

Please see attached sketch for  
clarification. The portion to be  
renamed is highlighted in red.

Respectfully submitted,

City of Fitchburg  
Planning Board  
By:

*Michael J. O'Hara*  
Michael J. O'Hara  
Principal Planner

Date: April 12, 2017

City of Fitchburg, May 1, 2018

Reports of  
Committees

City Property  
Committee



CITY OF FITCHBURG, MASSACHUSETTS

PLANNING BOARD

166 BOULDER DRIVE  
FITCHBURG, MASSACHUSETTS 01420

Michael O'Hara  
Principal Planner  
[MOHara@fitchburgma.gov](mailto:MOHara@fitchburgma.gov)

April 20, 2017

City Clerk  
City of Fitchburg  
166 Boulder Drive, Suite 108  
Fitchburg, MA 01420

2017 APR 20 AM 11:46  
FITCHBURG CITY CLERK

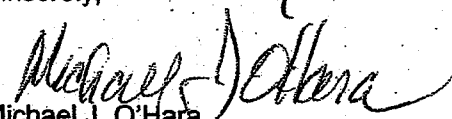
Dear Sir/Madam:

Enclosed please find an original and 13 copies of the following petitions submitted to City Council for consideration.

1. Discontinue as a Public Way, the section of Westminster Hill Road within the "Game On" property boundary easterly to parcel of land identified as Assessor's ID S32-6-0 on Westminster Hill Road. Street name TBD.
2. Rename the portion of Westminster Hill Road from Industrial Road easterly to the "Game On" property boundary. Street name TBD.
3. Rename the portion of Westminster Hill Road from the Westminster Town line to Industrial Road. Street name TBD.

Should you have any questions, please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

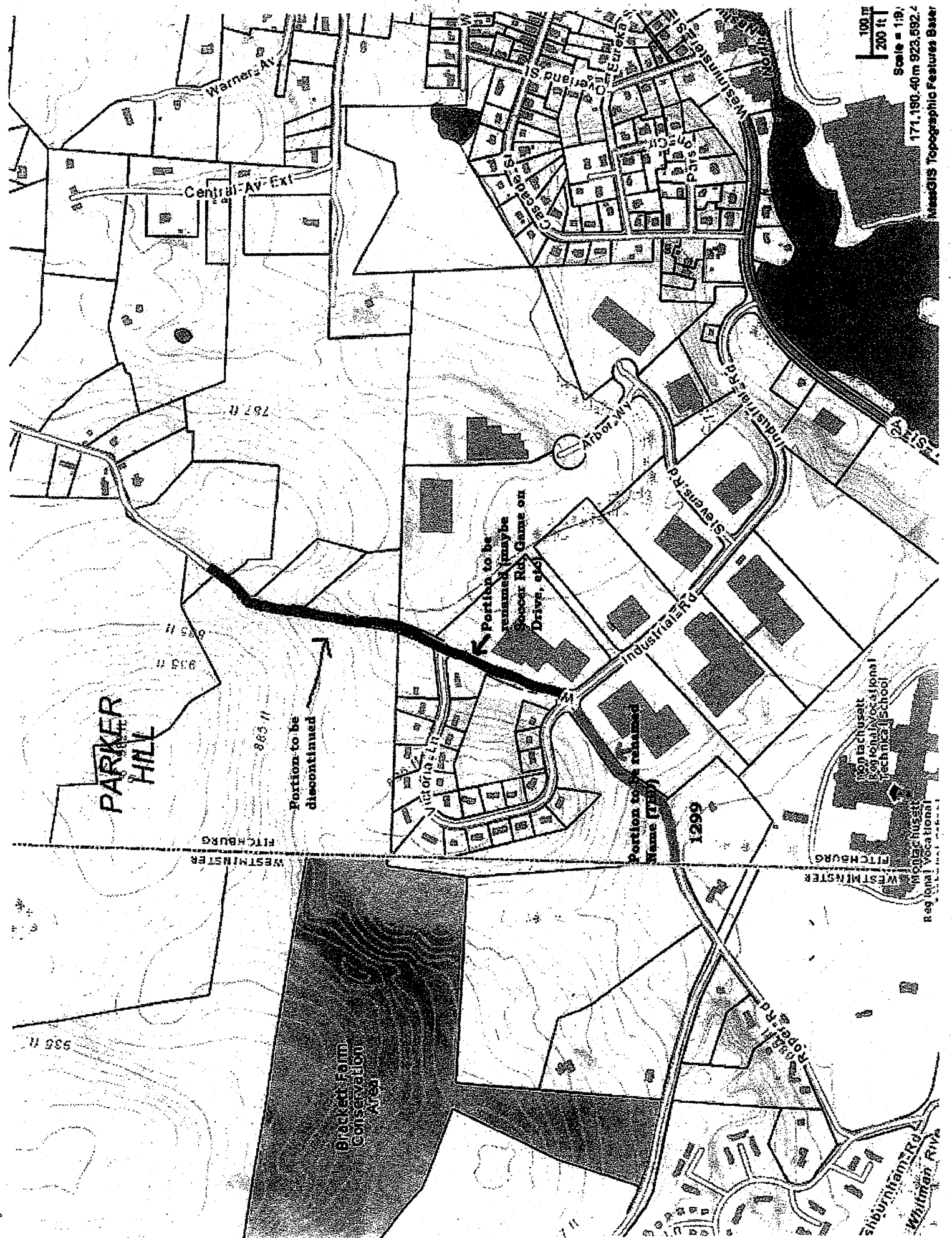
  
Michael J. O'Hara  
Principal Planner

Enclosures: (As stated)  
St: Memo.Clerk.CCPetitions.4.19.17

FITCHBURG MUNICIPAL OFFICES  
166 BOULDER DR, FITCHBURG, MA 01420-3125 • PHONE: (978) 829-1891 • FAX: (978) 829-1965  
*The Planning Division office is physically located in the Fitchburg Public Library, 610 Main Street*

Reports of  
Committees

City Property  
Committee



Report accepted. Petition granted with street name determined to be "Game On Way" by unanimous vote. 11 members present. Board consists of 11 members.

Reports of  
Committees

City Property  
Committee

The City Property Committee recommended the following Petition be amended to be renamed "Roper Road" and be granted as amended:

116-17. City of Fitchburg Planning Board, to rename the portion of Westminster Hill Road from the Westminster Town line to Industrial Road.

REPORT

The Committee on  
City Property Committee

to which was referred this petition recommend that the petition be granted be given leave to withdraw.

*Wanda Thayer*  
*James Thayer*  
*Anna M. Farrell*

In City Council

May 1, 2018

Report Read and Accepted  
Petition amended to rename it "Roper Road" and be granted as amended by unanimous vote. 11 members present. Board consists of 11 members.

Anna M. Farrell Clerk

No. 116 - 2017

PETITION

of

City of Fitchburg Planning Board

to

Rename the portion of Westminster Hill Road from the Westminster Town line to Industrial Road. Street name TBD. *(Roper Rd)*

In City Council

May 2, 2017

Referred to Committee on

Anna M. Farrell, Clerk

Clerk

FITCHBURG CITY CLERK

2017 APR 20 AM 11:47

TO THE HONORABLE CITY  
COUNCIL OF THE CITY OF  
FITCHBURG

Ladies and Gentlemen:

The undersigned Petition your Honorable Body to

Ladies and Gentlemen:

The undersigned Petition your Honorable Body to rename the portion of Westminster Hill Road from the Westminster Town line to Industrial Road. *Amend to Name it "Roper Road"*

Please see attached sketch for clarification. The portion to be renamed is highlighted in yellow.

Respectfully submitted,

City of Fitchburg  
Planning Board

By:

*Paula Caron*  
Paula Caron, Chair

Date: April 11, 2017



Reports of  
Committees

City Property  
Committee



CITY OF FITCHBURG, MASSACHUSETTS

PLANNING BOARD

166 BOULDER DRIVE  
FITCHBURG, MASSACHUSETTS 01420

Michael O'Hara  
Principal Planner  
[MOHara@fitchburgma.gov](mailto:MOHara@fitchburgma.gov)

April 20, 2017

City Clerk  
City of Fitchburg  
166 Boulder Drive, Suite 108  
Fitchburg, MA 01420

2017 APR 20 AM 11:46

FITCHBURG CITY CLERK


Dear Sir/Madam:

Enclosed please find an original and 13 copies of the following petitions submitted to City Council for consideration.

1. Discontinue as a Public Way, the section of Westminster Hill Road within the "Game On" property boundary easterly to parcel of land identified as Assessor's ID S32-6-0 on Westminster Hill Road. Street name TBD.
2. Rename the portion of Westminster Hill Road from Industrial Road easterly to the "Game On" property boundary. Street name TBD.
3. Rename the portion of Westminster Hill Road from the Westminster Town line to Industrial Road. Street name TBD.

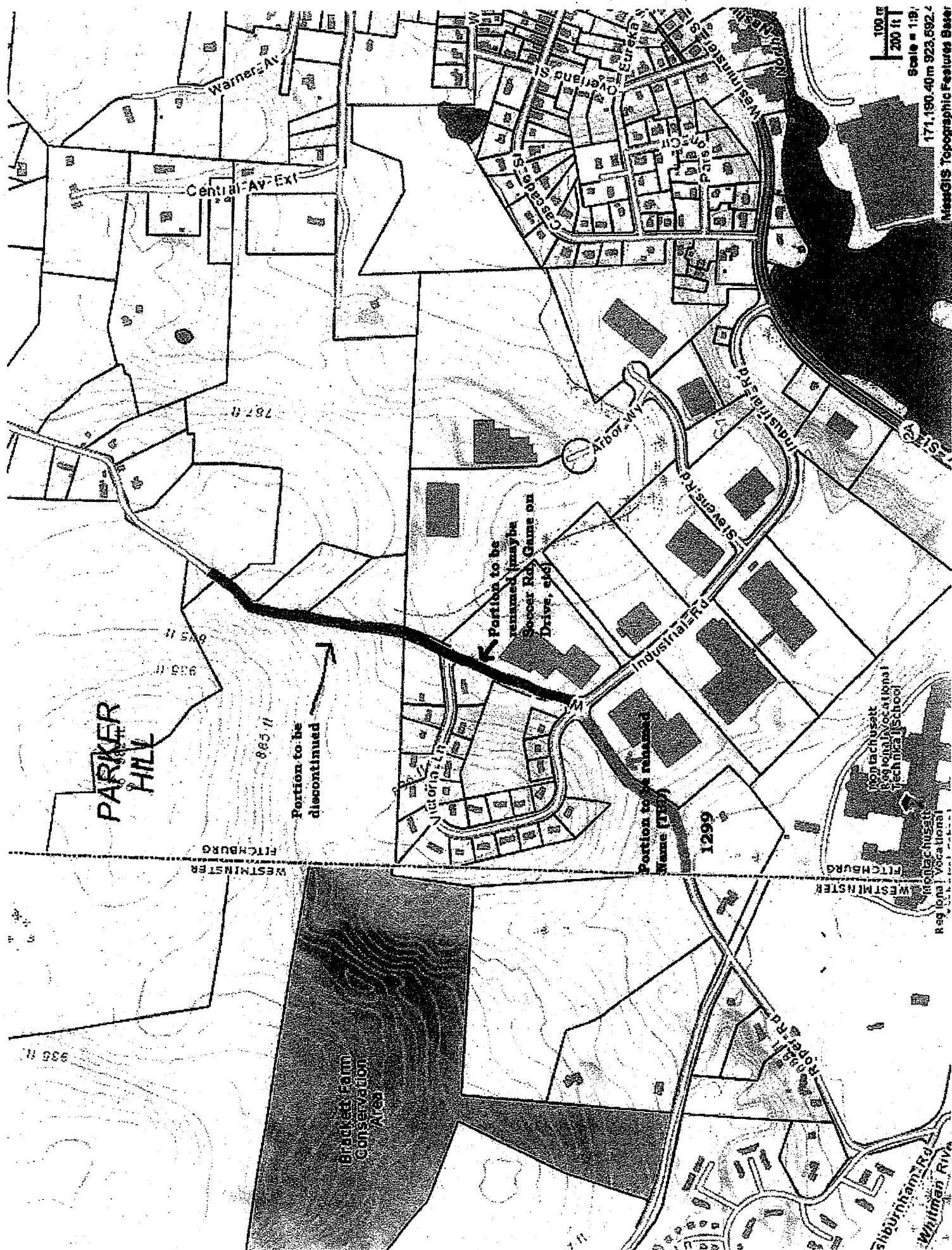
Should you have any questions, please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

  
Michael J. O'Hara  
Principal Planner

Enclosures: (As stated)  
St. Memo.Clerk.CCPetitions.4.19.17

FITCHBURG MUNICIPAL OFFICES  
166 BOULDER DR, FITCHBURG, MA 01420-3125 ♦ PHONE: (978) 829-1891 ♦ FAX: (978) 829-1965  
*The Planning Division office is physically located in the Fitchburg Public Library, 610 Main Street*



Reports of  
Committees

City Property  
Committee

Report accepted. Petition amended to be renamed "Roper Road" and granted as amended.

Reports of  
Committees

City Property  
Committee

The City Property Committee recommended the following Petitions  
be held in Committee:

315-17. Key Fitchburg, LLC, represented by Elisha W. Erb,  
Legal Counsel, to petition the City of Fitchburg's  
Public Works Department to accept a gift of land  
located on the east side of John Fitch Highway, Parcel  
86-4, as described in the enclosed petition.

TO THE HONORABLE CITY COUNCIL OF THE CITY OF FITCHBURG

Ladies and Gentlemen:

The undersigned Petition your Honorable Body to

accept a gift from Key Fitchburg, LLC to the City of Fitchburg's Department of  
Public Works of the land located on the east side of John Fitch Highway that is  
Fitchburg Assessors' Parcel 86-4, it being the land described in the proposed  
deed attached hereto.

Key Fitchburg, LLC

By: Elisha W. Erb  
Elisha W. Erb, Legal Counsel

2017 DEC 14 AM 8:49

FITCHBURG CITY CLERK

ERB+SOOTH+COTTE  
PO BOX 827  
FITCHBURG, MA 01420  
978-343-4856

Reports of  
Committees

City Property  
Committee

**QUITCLAIM DEED**

**Key Fitchburg, LLC**, a Massachusetts limited liability company,

FOR ONE DOLLAR (\$1.00) CONSIDERATION PAID  
GRANTS TO

The **City of Fitchburg**, a Massachusetts Municipality, acting through its  
Department of Public Works, with offices at 301 Broad Street, Fitchburg,  
Massachusetts,

**WITH QUITCLAIM COVENANTS**

The parcel of land on the east side of John Fitch Highway, Fitchburg identified  
by the Fitchburg Assessors as Parcel 86-4. Said parcel of land is bounded and  
described as follows<sup>1</sup>:

Beginning at the southwester corner thereof at a point in the easterly  
sideline of John Fitch Highway and at land now or formerly of James  
Harris (See Plan Book 302, Page 19);

Thence northerly by a curve to the left with a radius of 1,786.08 feet, by  
the westerly sideline of John Fitch Highway, approximately 350 feet  
measure along said sideline to the centerline of the former location of  
Baker Brook at land the Roman Catholic Bishop of Worcester conveyed  
to Rita Goode (see the deed recorded in Book 895, Page 489);

Thence northerly by the former centerline of Baker Brook and said Goode  
land, approximately 370 feet to land now of the Grantor formerly owned  
by Dora K. Baker (See Plan Book 117, Page 11 and Plan Book 121, Page  
11. The said Dora K. Baker land is Parcel II in the deed to the Grantor  
recorded in Book 4473, Page 270.)

Thence North 89° 17' East (per Plan Book 117, Page 11) beside said  
Baker land and land now of City of Fitchburg (See Book 1448, Page 167)  
approximately 482 feet to the town line between Fitchburg and  
Lunenburg;

Thence South 2° 46' 08" West, (per Plan Book 236, Page 11), by said  
town line, 883.24 feet to other land of the Grantor (said other land is  
"Baker Pond", so called, it being Parcel VI in the Book 4473, Page 270  
deed. See also Plan Book 122, Page 25);

Thence South 87° 56' 30" West (per Plan Book 122, Page 25), beside  
Baker Pond, 64.58 feet to a corner:

<sup>1</sup> The angular directions reported in the property description are taken from various  
plans as reported in the description. The true north of said plans vary slightly from  
plan to plan.

LOCATION OF PROPERTY: East side of John Fitch Highway, Fitchburg

Reports of  
CommitteesCity Property  
Committee

Thence North 76° 01' West, beside Baker Pond, 137.30 feet to a corner;

Thence North 56° 18' 30" West, beside Baker Pond, 110.36 feet to a corner;

Thence North 72° 24' 20" West, beside Baker Pond, 252.24 feet to a corner;

Thence South 89° 38' West, beside Baker Pond 86.70 feet to said land formerly of James Harris;

Thence North 52° 32' West, beside said Harris land 150.90 feet to the place of beginning.

Containing approximately 10.9 acres.

Being the part of Parcel IV in the deed to the Grantor from Reva Goode and from Meryl Rittenberg, as trustee of MSK Realty Trust, dated 22 November 2002, recorded in the Worcester Northern District Registry of Deeds in Book 4473, Page 270 remaining after excluding the part of the parcel located in Lunenburg that was transferred to the Town of Lunenburg by:

Order of Taking by the Town of Lunenburg dated 15 October 1979, recorded in Book 1232, Page 157 (See Plan Book 236, Page 11);

Bessie Kriensky's deed to the Town of Lunenburg date 19 June 1980. recorded in Book 1245, Page 375; and

Reva Goode's deed to the Town of Lunenburg date 4 January 1980. recorded in Book 1245, Page 376.

## SUBJECT TO

The land conveyed by this deed is subject to:

the 60 foot wide power line easement that Edith Baker granted to Fitchburg Gas and Electric Light Company dated 24 July 1947, recorded in Book 633, Page 383 and

the 150 foot wide power and gas line easement Charleen J. Baker and Charles B. Baker granted Fitchburg Gas and Electric Light Company dated 14 August 1958, recorded in Book 823, Page 68. (See Plan Book 117, Page 11.)

This deed does not convey all, or substantially all, of the land owned by the grantor.



City of Fitchburg, May 1, 2018

Reports of  
Committees

City Property  
Committee

Signed as a sealed document this \_\_\_\_ day of December 2017.

Key Fitchburg, LLC

**SPECIMEN**

By: \_\_\_\_\_  
Peter D. Kriensky, Manager

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

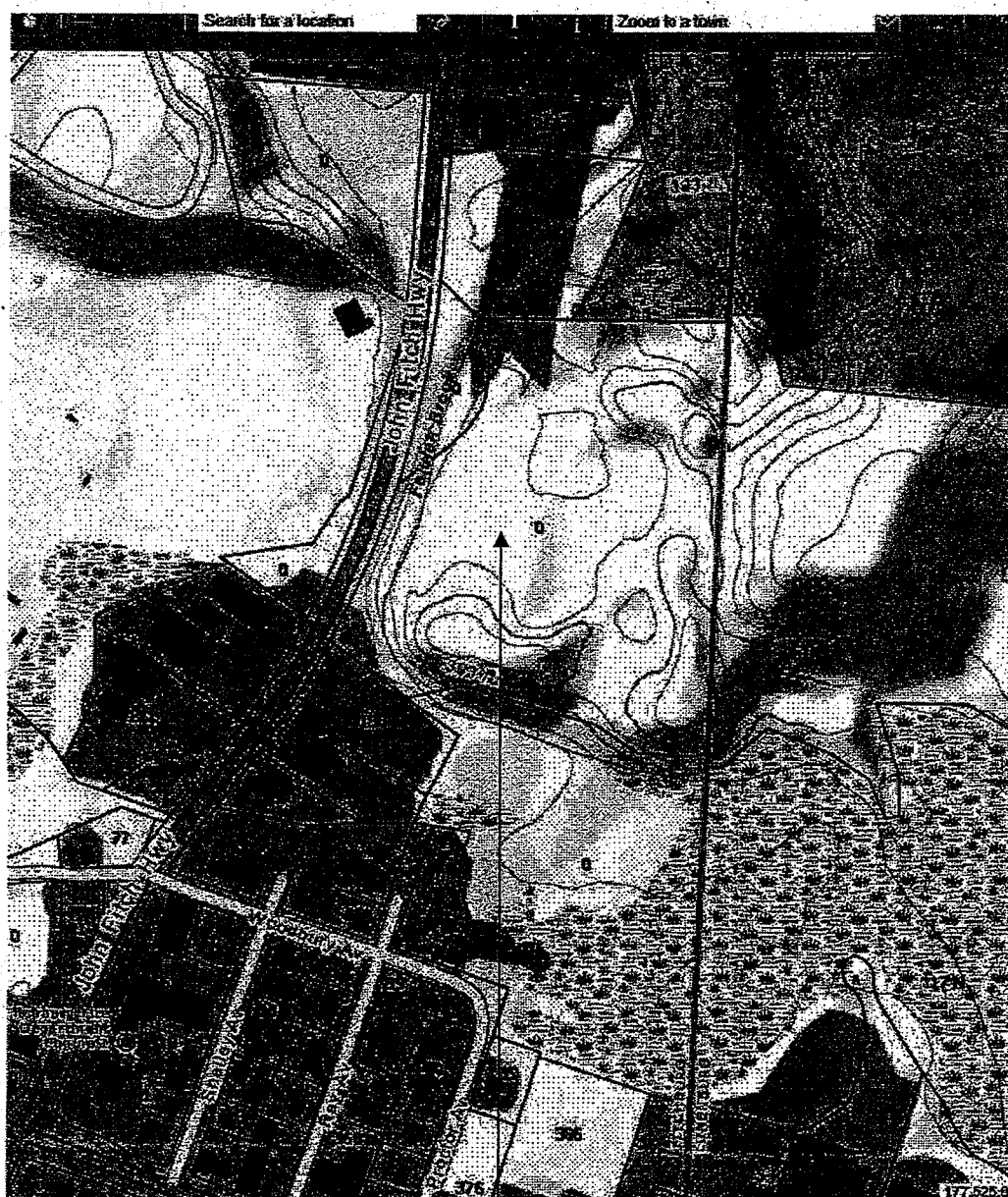
On the \_\_\_\_ day of December 2017, before me, the undersigned notary public, personally appeared Peter D. Kriensky, proved to me through satisfactory evidence of identification, which was <personal knowledge of identity><motor vehicle operator's license>, to be the person whose name is signed on the preceding deed and acknowledged to me that he signed it voluntarily for its stated purpose as a person authorized to sign real estate documents for Key Fitchburg, LLC.

\_\_\_\_\_  
Notary Public  
My commission expires:

Reports of  
Committees

City Property  
Committee

**NOT PART OF THE DEED**



**LAND TO BE DONATED TO DEPARTMENT OF PUBLIC WORKS**

PROPERTY LOCATION MAP 86 BLOCK 4 LOT 0

1105261

0 JOHN FITCH HWY, FITCHBURG

EXTERIOR INFORMATION

INTERIOR INFORMATION

TAX DISTRICT

OWNERSHIP

GENERAL INFORMATION

REMODELING

SUB AREA

COMMENTS

Legal Description

KEY FITCHBURG, LLC

200 BOYLSTON STREET

CHESTNUT HILL

MA

02467

1105261

ACTIVITY INFORMATION

PROPERTY FACTORS

CONDO INFORMATION

DEPRECIATION

IN PROCESS APPRAISAL SUMMARY

PREVIOUS ASSESSMENT

SALES INFORMATION

SPEC FEATURES/YARD ITEMS

CBD C BUS 100

Average

City of Fitchburg

0.00%

86.40

10526

14.570

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Reports of  
CommitteesCity Property  
Committee

316-17. Key Fitchburg, LLC, represented by Elisha W. Erb, Legal Counsel, to petition the Fitchburg Conservation Commission to accept a gift of three parcels of land located on the east side of John Fitch Highway and small parcel of land at the corner of intersection of Proctor Avenue with Woodbury Street as described in the enclosed petition.

**TO THE HONORABLE CITY COUNCIL OF THE CITY OF FITCHBURG**

Ladies and Gentlemen:

The undersigned Petition your Honorable Body to

to authorize the Fitchburg Conservation Commission to accept pursuant to Massachusetts General Laws, Chapter 40, Section 8C, a gift from Key Fitchburg, LLC of three parcels of land located on the east side of John Fitch Highway and small parcel of land at the corner of intersection of Proctor Avenue with Woodbury Street, they being the land described in the proposed deed attached hereto.

Key Fitchburg, LLC

By: Elisha W. Erb  
Elisha W. Erb, Legal Counsel

2017 DEC 14 AM 8:49

FITCHBURG CITY CLERK

ERB+ SOUTH COTTE  
PO BOX 827  
FITCHBURG, MA 01420  
978-343-4856

**QUITCLAIM DEED**

**Key Fitchburg, LLC**, a Massachusetts limited liability company,

FOR ONE DOLLAR (\$1.00) CONSIDERATION PAID  
GRANTS TO

The **City of Fitchburg**, a Massachusetts Municipality, acting through its  
Conservation Commission, as authorized by Massachusetts General Laws,  
Chapter 40, Section 8C, with offices at 301 Broad Street, Fitchburg,  
Massachusetts,

**WITH QUITCLAIM COVENANTS**

four parcels of land located in the easterly side of John Fitch Highway,  
Fitchburg, Massachusetts, and one parcel of land located where Woodbury  
Avenue meets Proctor Avenue, they being:

**Parcel 1 (Northerly part of Assessor's Parcel 86-2)**

A certain parcel of land located on the easterly side of John Fitch Highway,  
Fitchburg bounded and described as follows:

Beginning at the most southwesterly corner thereof on the easterly side  
of said highway at street bound No. 5 and Parcel 3 in this deed;

Thence North 13° 14' East, by said highway, 245.25 feet to a corner at  
land now or formerly of John Fitch Realty, LLC (Book 5014, Page 3);

Thence South 76° 46' East, by said John Fitch Realty, LLC land, 390 feet  
to a corner at conservation land of the City of Fitchburg (Book 1448,  
Page 167);

Thence South 32° 33' West, by said City land, 259.99 feet to a corner at  
Parcel 2 in this deed.

Thence North 76° 46' West, beside Parcel 2, for 304.03 feet to the place of  
beginning.

Containing approximately 85,109 sq. ft.

Being PARCEL I in Reva Goode and MSK Realty Trust's deed to the  
Grantor dated 22 November 2002, recorded in said Registry of Deeds in Book  
4473, Page 270.

Parcel 1 is subject to:

the power line easement Sarah E. Brown granted to Fitchburg Gas and  
Electric Light Company dated 4 August 1947, recorded in the Worcester  
Northern District Registry of Deeds in Book 633, Page 401 and

LOCATION OF PROPERTY: easterly side of John Fitch Highway, Fitchburg and intersection  
of Woodbury Avenue and Proctor Avenue

Reports of  
CommitteesCity Property  
Committee

the power line easement Sarah E. Brown granted to Fitchburg Gas and Electric Light Company dated 12 August 1958, recorded in the Worcester Northern District Registry of Deeds in Book 823, Page 71.

**Parcel 2 (Southerly part of Assessor's Parcel 86-2)**

A certain parcel of land located on the easterly side of John Fitch Highway, Fitchburg bounded and described as follows:

Beginning at the most northwesterly corner thereof on the easterly side of said highway at street bound No. 5 and land formerly of the Roman Catholic Bishop of Worcester (said Bishop's land is Parcel 3 in this deed.)

Thence South 76° 46' East, beside Parcel 1, for 304.03 feet to a corner at conservation land of the City of Fitchburg (Book 1448, Page 167);

Thence South 32° 33' West, beside said City land, 82.23 feet to a corner at land to be deeded by the Grantor herein to the City of Fitchburg acting through its Department of Public Works;

Thence North 82° 15' West, by said to be deeded land, approximately 184.15 feet to the center of the former location of Baker Brook at Parcel 3 in this deed;

Thence north westerly by Parcel 3 in this deed and the former location of Baker Brook by a slight curve to the left approximately 135 feet to the place of beginning.

Containing approximately 27,091 square feet.

Being PARCEL II in Reva Goode and MSK Realty Trust's deed to the Grantor dated 22 November 2002, recorded in said Registry of Deeds in Book 4473, Page 270.

Parcel 2 is subject to:

the power line easement Sarah E. Brown granted to Fitchburg Gas and Electric Light Company dated 4 August 1947, recorded in the Worcester Northern District Registry of Deeds in Book 633, Page 401 and

the power line easement Dora K. Baker granted to Fitchburg Gas and Electric Light Company dated 14 August 1958, recorded in the Worcester Northern District Registry of Deeds in Book 823, Page 70.



**Parcel 3 (Assessor's Parcel 86-3)**

A certain parcel of land located on the easterly side of John Fitch Highway, Fitchburg bounded and described as follows:

Beginning at the most northwesterly corner thereof on the easterly side of said highway at street bound No. 5;

Thence southerly by the westerly sideline of John Fitch Highway approximately 405 feet to a corner at the land to be deeded by the Grantor herein to the City of Fitchburg acting through its Department of Public Works;

Thence northeasterly, northerly and northwesterly by the former centerline of Baker Brook, the land to be conveyed to the City of Fitchburg acting through its Department of Public Works and Parcel 2 in this deed.

Being the same land that the Roman Catholic Bishop of Worcester conveyed to Rita Goode by the deed dated 6 January 1962, recorded in said Registry of Deeds in Book 895, Page 489. The land passed on Rita Goode's death to her son Joel Goode (see his Affidavit recorded in said Registry of Deeds in Book <>, Page <>). He conveyed to the land to the Grantor herein by the deed dated <>, recorded in said Registry of Deeds in Book <>, Page <>.

**Parcel 4 (Assessor's Parcel 99-2)  
(The part of Baker's Pond located in Fitchburg)**

A certain parcel of land located easterly of John Fitch Highway, Fitchburg bounded and described as follows:

Beginning at a point which is North 52° 32' West, 150.90 feet and North 61° 36' 10" West 25.00 feet from Station 15+74.77 on the centerline of the layout of John Fitch Highway.

thence North 89° 38' East, 86.70 feet to a corner;

thence South 72° 24' 20" East, 252.24 feet to a corner;

thence South 56° 18' 30" East, 110.36 feet to a corner;

thence South 76° 01' East, 137.30 feet to a corner;

thence North 87° 56' 30" East, 62.92 feet (94.14, -31.22) to the town line between Fitchburg and Lunenburg. The preceding five courses are beside the land to be deeded by the Grantor herein to the City of Fitchburg acting through its Department of Public Works;

Reports of  
CommitteesCity Property  
Committee

thence South 2° 44' 34" West, by said town line, 642.42 feet to a corner at land now or formerly of Aho;

thence North 71° 30' 30" West 413.23 feet (511.79 – 98.56) to the easterly side of Proctor Avenue, so called;

thence North 18° 31' 30" East, beside the easterly sideline of Proctor Avenue, 98.00 feet to a corner at the northerly sideline of Woodbury Avenue;

thence North 71° 28' 30" West, by the northerly sideline of Woodbury Avenue, 108.00 feet to a corner at land now or formerly of L. Smith,

thence North 0° 57' East, beside said L. Smith land, 62.95 feet to a corner;

thence North 35° 15' East, beside said L. Smith land, 30.00 feet to a corner;

thence North 14° 10' East, beside said L. Smith land and land now or formerly of S. E. Smith, 21.33 feet to a corner;

thence North 17° 58' 30" West, beside said S. E. Smith land, 62.21 feet to a corner;

thence North 1° 50' East, beside said S. E. Smith land, 52.21 feet to a corner;

thence North 9° 57' East, beside said S. E. Smith land, 54.84 feet to a corner;

thence North 81° 26' 30" West beside said S.E. Smith land and the end of Ray Avenue approximately 100.97 feet (152.97 – 52.00) to a corner at land now or formerly of Dean-Little Realty Trust;

thence North 18° 31' 30" East beside said Realty Trust land, 196.7 feet to a corner;

thence North 52° 32' West, beside said Realty Trust land; 126.1 feet to the place beginning.

Containing approximately 8.08 acres.

Being the part located in Fitchburg of PARCEL VI in Reva Goode and MSK Realty Trust's deed to the Grantor dated 22 November 2002, recorded in said Registry of Deeds in Book 4473, Page 270. (Said deed description erroneously includes the part of such land that Sidney G. Goode had conveyed to Dean-Little Realty Trust by the deed dated 25 September 1063, recorded in said Registry of Deeds in Book 934, Page 302. The above deed description does not include the land that had been conveyed to Dean-Little Realty Trust.)

Parcel 4 is subject to the easements and obligations stated in the Boston and Maine Railroad's deed to Fitchburg Plaza, Inc. dated 7 June 1962 recorded in said Registry of Deeds in Book 904, Page 293.

**Parcel 5 (Not assessed)**

A certain small triangular parcel of land in the westerly corner of the intersection of Proctor Avenue with Woodbury Street, bounded and described as follows:

Beginning at the point in the westerly sideline of Proctor Avenue, that is North 71° 30' 30" West 40.00 feet from the point in the easterly sideline of Proctor Avenue that is North 18° 31' 30" East, 539.31 feet from a brass plate in a concrete bound where said easterly sideline curves to meet Summer Street;

Thence from said beginning point, North 71° 30' 30" West, 7.00 feet to a corner at land now or formerly of Belmont Realty;

Thence North 12° 34' 30" West, beside said Belmont Realty land, 67.75 feet to a corner located in the southerly sideline of Woodbury Avenue;

Thence South 71° 28' 30" East, by the southerly sideline of Woodbury Avenue, 27.00 feet to a point of curvature;

Thence by a curve to the right with a radius of 15.00 feet, beside the fillet where Woodbury Avenue meets Proctor Avenue, for a distance measured along the arc of 23.56 feet at a point of tangency with the westerly sideline of Proctor Avenue;

Thence South 18° 31' 30" West, by the westerly sideline of Proctor Avenue, 43.00 feet to the place of beginning.

Containing approximately 1,373 square feet.

Being PARCEL VII in Reva Goode and MSK Realty Trust's deed to the Grantor dated 22 November 2002, recorded in said Registry of Deeds in Book 4473, Page 270.

This deed does not convey all, or substantially all, of the land owned by the grantor.

Signed as a sealed document this \_\_\_\_ day of December 2017.

Key Fitchburg, LLC

**SPECIMEN**

By: \_\_\_\_\_  
Peter D. Kriensky, Manager



Reports of  
Committees

City Property  
Committee

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

On the \_\_\_\_ day of December 2017, before me, the undersigned notary public, personally appeared Peter D. Kriensky, proved to me through satisfactory evidence of identification, which was <personal knowledge of identity><motor vehicle operator's license>, to be the person whose name is signed on the preceding deed and acknowledged to me that he signed it voluntarily for its stated purpose as a person authorized to sign real estate documents for Key Fitchburg, LLC.

\_\_\_\_\_  
Notary Public

My commission expires:

Notes to title examiners:

Parcels 2 and 3 appear in the plan recorded in Planbook 117, Page 11.  
Parcels 4 and 5 appear in the plan recorded in Planbook 122, Page 25.  
Plan Book 302, Page 19 shows the land adjacent Parcel 4 that had been conveyed to Dean-Little Realty Trust.

Reports of  
Committees

City Property  
Committee

NOT PART OF THE DEED



LAND TO BE DONATED TO CONSERVATION COMMISSION

City Property  
Committee

[illegible]

2019



Reports of Committees  
City Property Committee

PROPERTY LOCATION  
0  
Bakers Brook, Fitchburg

MAP  
99

BLOCK  
2

LOT  
0

TAX DISTRICT  
11606

OWNERSHIP  
FITCHBURG, CITY OF  
718 MAIN STREET  
FITCHBURG  
MA  
01420

ACTIVITY INFORMATION

PROPERTY FACTORS  
CBD C BUS 100

EXTERIOR INFORMATION

INTERIOR INFORMATION

GENERAL INFORMATION

DEPRECIATION

IN PROCESS APPRAISAL SUMMARY

930 7.500 84,200 84,200

7.500 84,200 84,200

7.500 84,200 84,200

Market Adj Cost N/A

12/11/17 15:40:41

PREVIOUS ASSESSMENT

2018 930 7.5 84,200 84,200

2017 930 7.5 84,200 84,200

SALES INFORMATION

BROWN SARAH E LET/TREAS 1/1/1976 INVOLVED GO 1 No

N/A 889-322 1/1/1986 CONVIENCE 1 No

SPEC FEATURES/NOTES

REMODELING

OTHER FEATURES

BATH FEATURES

RES BREAKDOWN

SUB AREA

CALC SUMMARY

1,000,000,000

16,000,000,000

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1,000,000,000

1,000,000,000

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COMMENTS

Legal Description  
SEE BOOK 517 PG.226

TOTAL ASSESSED: 84,200

BUILDING PERMITS CARD 1 of 1

LAND SECTION

930 VACANT 7.5 ACRES REAR 0 16,120 0.703 TOPO -50 84,200

7.50000 326700 930 VACANT 84,200 Y

Report accepted. Petitions held in Committee by unanimous vote.  
11 members present. Board consists of 11 members.

The City Property Committee recommended the following Petition be held in Committee and referred to the Parks Board for comment:

044-18. Councilors Squailia and Zarrella, and David Thibault-Munoz, to postpone the listing of the 116-118 Day Street property to the side yard sales program in order to explore the possibility of creating a Pocket Park to honor Abolitionist Benjamin Snow.

Reports of  
Committees

City Property  
Committee

**TO THE HONORABLE CITY COUNCIL OF THE CITY OF FITCHBURG**

**Ladies and Gentlemen:**

**The undersigned Petition your Honorable Body to**

Postpone listing of the vacant lot at 116 Day Street for the *Side Yard Sales Program*, in order to explore the possibility of creating a Historic Pocket Park to honor Fitchburg abolitionist Benjamin Snow at the location, as proposed by Mount Wachusett Community College students in David Thibault-Munoz's Freshman Year Experience (FYE 101) class.

Background: Last summer, David Thibault-Munoz's FYE 101 students conducted historical research on the Fitchburg's connection to the movement to abolish slavery in the United States, particularly as it relates to Benjamin Snow's activism in the 1850-60s. Mill owner and abolitionist Benjamin Snow's 3 acre property extended from Green to Pearl streets in the south and north and Blossom and North streets from the east and west side of the college neighborhood. The Snow residence hosted several famous abolitionists while on their speaking tours in the area. Such prominent leaders included Frederick Douglas, William Lloyd Garrison, Lucy Stone, the Grimske sisters, Wendell Phillips, Henry Clarke-Wright, and Theodore Dwight-Weld. Snow's home also served as a depot on the Underground Railroad; two famous former slaves that he and his family helped to freedom were Josiah Henson, the person that the book Uncle Tom's Cabin was based on and Shadrach Minkins, who escaped re-enslavement after the passage of the Fugitive Slave Act in 1850. Each semester, David's FYE class has continued work on the project.

2018 MAR -1 AM 8:44  
FITCHBURG CITY CLERK

Report accepted. Petition held in Committee and referred to the Parks Board for comment by unanimous vote. 11 members present. Board consists of 11 members.

Reports of  
Committees

## Finance Committee

**Finance Committee**  
**Meeting of April 24, 2018**

The Finance Committee recommended the following Orders be adopted:

107-18. ORDERED THAT: There be and hereby is appropriated the sum of NINETY-ONE THOUSAND, FIVE HUNDRED NINETY-TWO DOLLARS (\$91,592.00), same to be charged against AVAILABLE FUNDS and credited to accounts as follows:

Police/Dispatch-Personal Services:	\$79,431
Police/Dispatch-Overtime	\$ 9,000
Treasurer-Personal Service	\$ 3,161

108-18. ORDERED THAT: There be and hereby is transferred the sum of SEVEN THOUSAND, FIVE HUNDRED SIXTY-EIGHT DOLLARS (\$7,568.00) from Airport Expenses, Aviation Fuel and credited to Airport, Personal Services.

109-18. ORDERED THAT: There be and hereby is transferred from within the sum of TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) same to be transferred from POLICE, PERSONAL SERVICES, INCENTIVES and credited to POLICE, OTHER EXPENSES, ANIMAL CONTROL.

110-18. ORDERED THAT: The City of Fitchburg hereby approves the expenditure of funds from the Massachusetts Executive Office of Health and Human Services, Department of Mental Health grant in the approximate amount of \$49,365.00 (FORTY-NIN THOUSAND, THREE HUNDRED SIXTY FIVE AND 00/100 DOLLARS) for the purpose of said grant, which is to support a police based jail Diversion Program for individuals with Mental Illnesses or emotional disturbances.

Report read and accepted. Orders adopted by unanimous vote. 11 members present. Board consists of 11 members. Orders signed by the Mayor May 2, 2018.

**Legislative Affairs Committee**  
**Meeting of April 24, 2018**

The Legislative Affairs Committee recommended the following Petition be given leave to withdraw:

026-18. Councillor Paul Beauchemin, to have the City of Fitchburg charge 5 cents per nip purchased at City package stores, with the proceeds to be donated to the DPW for equipment upgrades and other needs.

Report read and accepted. Petition given leave to withdraw by vote of 10 in favor and 1 opposed (Beauchemin). 11 members present. Board consists of 11 members.

The Legislative Affairs Committee recommended the following Petition be given leave to withdraw:

318-17. Councillor Joel Kaddy, to ban plastic bags.

Report read and accepted. Petition given leave to withdraw by unanimous vote. 11 members present. Board consists of 11 members.

Reports of  
Committees  
Legislative Affairs  
Committee

Reports of  
Committees

Planning Board

**Planning Board**  
**Meeting of April 10, 2018**

The Planning Board recommended the following Petition be granted:

- 102-18. The City of Fitchburg Planning Board, to amend section 181.13(c) 14-A of the Fitchburg Zoning Ordinance to allow "Seasonal Outdoor Dining" as a permitted use in the Industrial and Light Industrial districts, as shown on the attached.



**CITY OF FITCHBURG**  
**PLANNING BOARD**  
166 BOULDER DRIVE  
FITCHBURG, MASSACHUSETTS 01420

(978) 829-1891  
PHONE

(978) 829-1965  
FAX

**DATE:** April 11, 2018

**TO:** City Council  
City Clerk

**FROM:** Paula Caron, Chair  
Fitchburg Planning Board

**SUBJECT:** Ordinance #102-2018 to amend Section 181.13(c)14-A, Seasonal Outdoor Dining

At its April 10, 2018 meeting the Fitchburg Planning Board voted unanimously to recommend in favor of the above-noted amendment, and suggests that "Seasonal Outdoor Dining" also be permitted by right in the Commercial & Automotive (C&A) zoning district.

cc: Law Dept.  
Planning Board members

attachment

2018 APR 12 AM 9:02

FITCHBURG CITY CLERK



Reports of  
Committees  
  
Planning Board

Amend Sec. 181.13(c) 14, to allow "Seasonal Outdoor Dining" in the Limited Industrial & Industrial districts  
AND Commercial & Automotive zoning districts, as follows:

PRINCIPAL USE:	RR	RA-1	RA-2	RB	RC	CBD	NBD	C&A	LI	I	MS	FSC
C. COMMERCIAL USES												
14. Restaurant	N	N	N	BA	BA	Y	Y	Y	PB	PB	N	PB
14A. Seasonal outdoor dining	N	N	N	Y	Y	Y	Y	<del>N</del> Y	<del>N</del> Y	<del>N</del> Y	N	PB

SYMBOLS:  
Y = Permitted Use  
N = Prohibited Use  
CC = Special Permit from City Council  
PB = Special Permit from Planning Board  
BA = Special Permit from Board of Appeals

Report accepted and referred to the Public Hearing for Petition  
102-18.

PUBLIC HEARINGS

102-18. The City of Fitchburg Planning Board, to amend section 181.13(c) 14-A of the Fitchburg Zoning Ordinance to allow "Seasonal Outdoor Dining" as a permitted use in the Industrial and Light Industrial districts, as shown on the attached.

FITCHBURG CITY CLERK	
REPORT	PAR 27 PM 1:53
The Committee on	
to which was referred this petition recommend that the petition be granted, be given leave to withdraw.	
Fitchburg Planning Board	
No.	
PETITION	
of	
In City Council	
Referred to Committee on	
Clerk	
Report Read and Accepted	
Clerk	

TO THE HONORABLE CITY COUNCIL OF THE CITY OF FITCHBURG

Ladies and Gentlemen:

The undersigned Petition your Honorable Body to

Amend Section 181.13(c)14-A of the Fitchburg Zoning Ordinance to allow "Seasonal Outdoor Dining" as a permitted use in the Industrial and Light Industrial districts, as shown on the attached.

Per vote of the Board 3/13/2018.

Michael J. Shaw  
Fitchburg Planning Board

Public Hearing

Amend Sec. 181.13(c) 14, to allow "Seasonal Outdoor Dining" in the Limited Industrial & Industrial districts  
AND Commercial & Automotive zoning districts, as follows:

PRINCIPAL USE:	RR	RA-1	RA-2	RB	RC	CBD	NBD	C&A	LI	I	MS	FSC
C. COMMERCIAL USES												
14. Restaurant	N	N	N	BA	BA	Y	Y	Y	PB	PB	N	PB
14A. Seasonal outdoor dining	N	N	N	Y	Y	Y	Y	<del>N</del> Y	<del>N</del> Y	<del>N</del> Y	N	PB

SYMBOLS:  
Y = Permitted Use  
N = Prohibited Use

CC = Special Permit from City Council  
PB = Special Permit from Planning Board  
BA = Special Permit from Board of Appeals

Hearing held. Tom Skwierawski, Executive Director Community Development and Mary Jo Bohart, Economic Development Director, were present. In response to questions from Councillors they gave examples of establishments that would be affected positively by this zoning change (Dario's, Riverstyx, Legends). No one spoke in favor of or in opposition to the Petition.

Hearing closed and petition granted by unanimous vote. 11 members present. Board consists of 11 members.

Petition forwarded to the City Solicitor for preparation of an Ordinance.

-----

*City of Fitchburg,* May 1, 2018

Orders-Finance

**ORDERS-FINANCE**

The following Order was referred to the Finance Committee:

- 115-18. ORDERED THAT: The Airport Commission be authorized to lease for a period of more than 20 years a certain premise at the Fitchburg Municipal Airport to FACT under the terms and conditions as set forth on the attached RESTATED Lease, originally authorized by petition 055-03.

*City of Fitchburg*

FITCHBURG CITY CLERK

2018 APR 26 AM 10:23

In City Council,

ORDERED:- That

Whereas the City by petition 00055-03 authorized the Airport Commission to lease land at the Fitchburg Municipal Airport, without buildings thereon for a period in excess of 20 years to the Fitchburg Aircraft Condominium Trust on or about April of 2003.

Where as M.G.L. c. 90 §51F provides "With the approval of the mayor and the city council in cities or the approval of a town meeting, as the case may be, said commission may so let or lease for a longer period; provided, that no such airport in the cities of New Bedford and Beverly shall be let or leased except with the approval of the mayor and the city council; or in the town of Southbridge by vote of the town."

Whereas the parties had a dispute as to the lease that was approved and that both were desirous of the execution of a Restated Lease.

Whereas negotiations have just concluded, and the Restated Lease is attached hereto.

Wherefore, the it is ORDERED that, The Airport Commission be authorized, in accordance with M.G.L. c. 90 § 51F to lease for a period of more than 20 years a certain premise at the Fitchburg Municipal Airport to FACT under the terms and conditions as set for the on the attached Restated Lease.



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**FITCHBURG MUNICIPAL AIRPORT  
Amended and Restated Ground Lease**

This instrument is an amended and restated indenture of lease by and between the CITY OF FITCHBURG by and through the FITCHBURG MUNICIPAL AIRPORT COMMISSION, a public agency duly created by the City of Fitchburg, acting pursuant to the statutory powers set forth under Massachusetts General Laws, Chapter 90, Sections 51D through 51N and special laws in existence prior thereto, and having its usual place of business at the Fitchburg Municipal Airport, Fitchburg, Massachusetts ("Landlord") and, as they are trustees of the FITCHBURG AIRCRAFT CONDOMINIUM TRUST ("FACT") established by Declaration of Trust dated April 12, 2004 recorded with the Worcester Northern District Registry of Deeds (the "Registry") in Book 5213, Page 123, successor in interest to Liebfried Realty Trust under Declaration of Trust dated April 12, 2004 and recorded with said Deeds in Book 5213, Page 123 ("Liebfried) and the lessee's successors and assigns. ("Tenant").

WHEREAS: LANDLORD and LIEBFRIED entered into a ground lease entitled "Fitchburg Municipal Airport Lease" dated June 25, 2003 recorded with said Deeds in Book 4984, Page 280 (the "Original Ground Lease"); and

WHEREAS: LIEBFRIED, by document entitled "Declaration of the Fitchburg Aircraft Condominium Trust" dated April 12, 2004 recorded with said Deeds in Book 5213, Page 123 (the "Declaration of Trust") which established the Fitchburg Aircraft Condominium Trust (the "Condominium Trust"; and

WHEREAS: by instrument entitled "Sublease Agreement Fitchburg Aircraft Condominium" dated April 12, 2004 recorded with said Deeds in Book 5213, Page 145, Liebfried established the Fitchburg Aircraft Condominium (the "Condominium"); and

WHEREAS the parties to this instrument hereby agree with each other to amend and restate the Ground Lease as set forth herein:

**ARTICLE I SUMMARY OF BASIC LEASE PROVISIONS**

**1.1 INTRODUCTION**

This document is an Amendment and Restatement of the Ground Lease. As further supplemented in the balance of this instrument and its Exhibits, the following sets forth the basic terms of this Ground Lease, and, where appropriate, constitutes definitions of certain terms used in this Ground Lease.

1.2 BASIC DATA

Restated Term  
Commencement Date: January 1, 2018

Landlord: The Fitchburg Municipal Airport

Present Mailing  
Address of Landlord: 567 Crawford Street  
Fitchburg, MA 01420

Payment Address: 567 Crawford Street  
Fitchburg, MA 01420

Managing Agent: The Airport Manager

Tenant: Fitchburg Airport Condominium Trust

Tenant Mailing Address P.O. Box 541  
Harvard, MA 01451

Premises: A certain area of land consisting of 212,298 square feet of land,  
as more particularly described in Exhibit A attached hereto and  
incorporated herein, but not including the buildings thereon.

The Landlord reserves the right to install, use, maintain, repair  
and replace in the Premises (but in such manner as not  
unreasonably to interfere with Tenant's use of the Premises)  
utility lines, shafts, pipes, and the like, in, over, under and  
upon the Premises. Such utility lines, shafts, pipes and the  
like shall not be deemed part of the Premises under this Lease.

Restated Lease Term: Twenty (20) years from the Restated Term Commencement  
Date of January 1, 2018 (subject to extension as provided in  
Section 3.3 hereof (which provides an option for two twenty  
(20) year extension periods).

Original Term  
Commencement Date: Original Term Commencement Date: June 25, 2003.

Base Rent: For the first period beginning on the Restated  
Commencement Date and ending on December 31, 2037, at  
the rate of \$31,700.00 per annum (\$2,641.67 per month),  
subject to annual increases as stated in Paragraph 4.1(b) below

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(by an amount equal to the greater of (i) 1.75% or (ii) fifty (50%) percent of the annual difference calculated as a percentage in the Consumer Price Index for Urban Consumers seasonally adjusted ("CPI") over the same CPI in effect as of the commencement of the immediately prior lease year.

Additional Rent:

For the first period beginning on the Restated Term Commencement Date and ending on December 31, 2018, additional rent for snow plowing and weed/vegetation overgrowth removal, at the rate of \$12,000.00 per annum (\$1,000.00 per month), subject to annual increases as set forth in Paragraph 4.1(d) below (a) by an amount equal to the greater of (i) 1.75% or (ii) the annual difference calculated as a percentage in the Consumer Price Index for Urban Consumers seasonally adjusted ("CPI") over the same CPI in effect as of the commencement of the immediately prior lease year.)

Due Date:

Equal monthly installments are due on the 1<sup>st</sup> day of each calendar month.

Hanger Maintenance Fund:

Tenant shall maintain a Hangar Maintenance Fund as set forth in Section VI of Addendum D below in the amount of \$15,000, with scheduled increases of \$5,000 every five years beginning January 1, 2023.

Guarantor of Tenant's Obligations:

Not applicable.

Permitted Use:

For the storage, maintenance and use of aircraft, and those limited uses and activities which are incidental to the storage, maintenance and use of private aircraft, and such other uses and activities as shall be permitted by the Federal Aviation Authority (the "FAA") subject to such limitations thereon as shall be proscribed from time by the "FAA", and for no other purpose or purposes (the "Permitted Use").

1.3 ENUMERATION OF EXHIBITS

EXHIBIT A: PLAN SHOWING THE PREMISES  
EXHIBIT B: TERM COMMENCEMENT DATE AGREEMENT  
EXHIBIT C: SCHEDULE OF TENANT HAZARDOUS WASTE  
EXHIBIT D: RECITALS AND SPECIFIC PROVISIONS  
EXHIBIT E: LIEBFRIED UNITS

**ARTICLE II DESCRIPTION OF PREMISES AND APPURTENANT RIGHTS**

2.1 LOCATION OF PREMISES The Landlord hereby leases to Tenant, and Tenant hereby accepts from Landlord, the property identified on Exhibit A on Landlord's property (the "Premises"), a certain area of land consisting of 212,298 square feet of land as more particularly described in Exhibit A attached hereto and incorporated herein, but not including the buildings thereon, located at Fitchburg, Massachusetts.

2.2 APPURTENANT RIGHTS AND RESERVATIONS Tenant shall have, as appurtenant to the Premises, rights to use, in common with others entitled thereto, the common facilities located on the land which constitutes the Fitchburg Municipal Airport (the "Airport"), including, without limitation, common walkways, driveways, lobbies, hallways, ramps, stairways, runways, roadways, aprons, taxiways, floodlights, landing lights, beacons, signals, radio aids and all other conveniences for flying, landing or departing. Such rights shall always be subject to reasonable rules and regulations from time to time established by Landlord by suitable notice, and to the right of Landlord to designate and to change from time to time the areas and facilities so to be used, provided that such changes do not unreasonably interfere with the use of the (i) Premises for the Permitted Use and (ii) the remainder of the Airport for general aviation purposes.

2.3 EXCLUSIONS AND RESERVATIONS

- (a) Not included in the Premises are any buildings located on the land identified in Exhibit A. The Landlord reserves the right to install, use, maintain, repair and replace in the Premises (but in such manner as not unreasonably to interfere with use of the Premises by each of the Unit Owners) utility lines, shafts, pipes, and the like, in, over and upon the Premises. Landlord agrees to repair any damage to the Premises caused by the installation, maintenance, repair or replacement of any such items. Such utility lines, shafts, pipes and the like shall not be deemed part of the Premises under this Lease.
- (b) The Tenant shall ensure the Premises is used in a manner so as not to unreasonably annoy, disturb, or be offensive to others at the Airport or abutting properties consistent with the terms of Article V below.

**ARTICLE III TERM OF LEASE; CONDITION OF PREMISES**

3.1 **TERM OF LEASE** The term of this Lease shall be the period specified in Section 1.2 hereof as the "Restated Lease Term" commencing upon the Restated Lease Term Commencement Date specified in Section 1.2. The parties agree that on the request of either party each will execute, acknowledge, and deliver a Notice of Lease in recordable form but excluding explicit financial provisions.

3.2 **CONDITION OF PREMISES** Tenant acknowledges that it has inspected the Premises and agrees to accept same in its "as is" condition, and further Tenant agrees that Landlord has no obligation to perform any work whatsoever in order to prepare the Premises for Tenant's occupancy hereunder.

3.3 **EXTENSION OPTIONS**

3.3.1 Except as provided in Section 3.3.2 below, the Term of Lease shall be automatically extended for the following extended terms upon the same terms and conditions set forth herein, provided Tenant is not in default on the commencement date of the Extension Term beyond applicable periods of notice and cure, without any action on behalf of Tenant,

(a) a First Extended Term of twenty years commencing on January 1, 2038 and ending on December 31, 2058;

(b) a Second Extended Term of five years commencing on January 1, 2059 and ending on December 31, 2063;

(c) a Third Extended Term of five years commencing on January 1, 2064 and ending on December 31, 2068;

(d) a Fourth Extended Term of five years commencing on January 1, 2069 and ending on December 31, 2074; and

(e) a Fifth and Final Extended Term of five years commencing on January 31, 2075 and ending on December 31, 2079.

3.3.2 Notwithstanding the foregoing, Tenant may elect terminate this lease prior to the commencement of any such Extended Term by written notice to Landlord at least six months prior to the commencement of such Extended Term.

3.3.3 Any such extension shall be upon the same terms, covenants, and conditions contained in this Lease except that Tenant shall have no further right to extend the Lease Term not granted in this Agreement, and except that the Base Rent for any Extension Term to which the annual increase shall apply shall be at the rental rate payable per annum at the expiration of the previous Term as



provided in Section 4.1(b).

3.4 **REMOVAL OF PROPERTY, IMPROVEMENTS AT LEASE TERMINATION** Upon termination of this Lease under whatever circumstances, the Tenant shall immediately remove all personal property, trash and debris and leave the Premises in a clean and neat condition, subject to reasonable wear and tear. All buildings, structures, fixtures and other improvements existing on the Premises six (6) months or less before the end of this Lease shall become the property of the Fitchburg Municipal Airport.

3.5 **PAYMENTS BY LIEBFRIED** Notwithstanding anything to the contrary set forth herein, Liebfried Realty Trust shall remain obligated to pay to Landlord five percent of the actual sale price of the units presently owned by Liebfried Realty Trust listed on Exhibit E hereto as set forth in Section 3.1 of the Original Ground Lease and neither the Tenant nor any of the owners of other units in the Fitchburg Aircraft Condominium shall have any obligation with respect to any such payment due to Landlord. Landlord acknowledges and agrees that all payments fee required to be made with respect to sale of all other units in the Fitchburg Aircraft Condominium have been paid in full.

#### ARTICLE IV RENT

4.1 **RENT PAYMENTS** The Base Rent (at the rates specified in Section 1.2 hereof) and the additional rent or other charges payable pursuant to this Lease (collectively the "Rent") shall be payable by Tenant to Landlord at the Payment Address or such other place as Landlord may from time to time designate by notice to Tenant without any demand whatsoever except as otherwise specifically provided in this Lease and without any counterclaim, offset or deduction whatsoever. Rent shall be made payable to the order of the Landlord.

(a) Beginning on the Rent Commencement Date, monthly installments of Base Rent and of Tenant's charges and fees shall be payable in advance on the first day of each and every calendar month during the term of this Lease. If the Rent Commencement Date falls on a day other than the first day of a calendar month, the first payment which Tenant shall make shall be made on the Rent Commencement Date and shall be equal to a proportionate part of such monthly Rent for the partial month from the Rent Commencement Date to the first day of the succeeding calendar month, and the monthly Rent for such succeeding calendar month. As used in this Lease, the term "lease year" shall mean any calendar year or part thereof falling within the Lease Term.

(b) Increases in Base Rent: The Base Rent shall be increased annually as of January 1,

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2019 for each lease year beginning with the first increase on July 1, 2019, by an amount equal to the greater of (i) 1.75% or (ii) fifty (50%) percent of the annual difference calculated as a percentage in the Consumer Price Index for Urban Consumers seasonally adjusted ("CPI") over the same CPI in effect as of the commencement of the immediately prior lease year.

- (c) Additional Rent: Subject to the provisions below, Tenant shall pay additional rent to Landlord in compensation for snow plowing and weed removal as provided in said Section 8.2, in the amount of Twelve Thousand Dollars (\$12,000.00), paid equal monthly installments of One Thousand Dollars (\$1,000.00) due and payable on the first day of each calendar month during all terms of this Lease.
- (d) Increases in Additional Rent. The Additional Rent shall be increased annually on July 1 of each lease year, beginning on January 1, 2019, by an amount equal to the greater of (i) 1.75% or (ii) the annual difference calculated as a percentage in the Consumer Price Index for Urban Consumers seasonally adjusted ("CPI") over the CPI in effect as of the commencement of the immediately prior lease year.
- (e) Tenant states and avers that the initial sale of all aircraft storage units currently on the premises other than those listed on Exhibit E hereto has already occurred and that all payments required to be made upon the sale of the same, except as specified in Paragraph 3.5 above, have been paid in full.
- (f) Rent, charges and fees not paid within ten (10) days of the date due shall bear interest at a rate (the "Lease Interest Rate") equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum legally permissible rate, from the due date until paid, plus any and all attorneys' fees and costs incurred by the Landlord incurred in connection with the collection of the foregoing.

#### 4.2 TAXES AND ASSESSMENTS

- (a) Nothing in this Agreement shall relieve Tenant or the Unit Owners of any lawful obligation to pay taxes (including without limitation, assessments for public improvements or benefits and water and sewer use charges), assessed against the them during any tax year (i.e., July 1 through June 30, as the same may change from time to time) or part thereof during the Lease Term.
- (b) Tenant shall pay or cause to be paid, prior to delinquency, any and all taxes and assessments levied upon all real estate, structures, improvements, trade fixtures, inventories and other real or personal property placed in and upon the Premises by Tenant.

#### **ARTICLE V USE**

5.1 PERMITTED USE Tenant agrees that the Premises shall be used and occupied by Tenant only for the purposes specified as the Permitted Use thereof in Section 1.2 of this Lease, and for no other purpose or purposes. The Tenant shall comply and shall cause its Unit Owners, lessees, employees, agents, and invitees to comply with all requirements of the FAA for the use of the Premises and such rules and regulations as Landlord shall from time to time establish for the proper regulation of the Premises and the Airport, provided that such additional rules and regulations shall be of general application to all the tenants in the Airport, except where different circumstances justify different treatment. Neither the Landlord nor the City of Fitchburg makes any guarantee or warranty or representation that the Premises are fit for the uses to which they may be put by the Tenant, or for any other uses or purposes whatsoever. It shall be the sole duty of the Tenant to determine that the Premises are appropriate for its uses and purposes.

5.2 COMPLIANCE WITH LAWS Tenant agrees that no trade or occupation shall be conducted in the Premises or use made thereof which will be unlawful, improper or contrary to any law, ordinance, by-law, code, rule, regulation or order applicable in the municipality in which the Premises are located or which will disturb the quiet enjoyment of the other tenants of the Airport. Tenant shall obtain any and all approvals, permits, licenses, variances and the like from governmental or quasigovernmental authorities, including without limitation any Architectural Access Board and Board of Fire Underwriters (collectively, "Approvals") which are required for Tenant's use of the Premises, including, without limitation, any which may be required for any construction work and installations, alterations or additions made by Tenant to, in, on or about the Premises; provided, however, that Tenant shall not seek or apply for any Approvals without first having given Landlord a reasonable opportunity to review any applications for Approvals and all materials and plans to be submitted in connection therewith and obtaining Landlord's written consent, which consent shall not be unreasonably withheld. In any event, Tenant shall be responsible for all costs, expenses, and fees in connection with obtaining all Approvals. Without limiting the general application of the foregoing, Tenant shall be responsible for compliance of the Premises, including, without limitation, any alterations it may make to the Premises with the requirements of the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto, as the same may be amended from time to time (collectively, the "ADA"). The Landlord shall be responsible for the compliance with the requirements of the ADA of the common areas of the Airport, and the access to the Premises from the common areas. Tenant's inability to obtain or delay in obtaining any such Approval shall in no event reduce, delay, or terminate Tenant's rental, payment, and performance obligations hereunder. Tenant shall, at its own cost and expense, (i) make all installations, repairs, alterations, additions, or improvements to the Premises required by any law, ordinance, by-law, code, rule, regulation or order of any governmental or quasi-governmental authority, except waste committed by Landlord; (ii) keep the Premises equipped with all required safety equipment and appliances; and (iii) comply with all laws, ordinances, codes, rules, regulations and orders and the requirements of Landlord's and Tenant's insurers applicable

to the Premises and Airport. Tenant's duly authorized representative(s) shall execute such documentation as the Landlord may reasonably require to accept the duties and obligations set forth in this Lease.

5.3 INSURANCE RISKS Tenant shall not permit any use of the Premises which will make voidable or, unless Tenant pays the extra insurance premium attributable thereto as provided below, increase the premiums for any insurance on the Airport's common areas, which are contrary to any law or regulation from time to time established by the New England Fire Insurance Rating Association (or any successor organization), or which shall require any alteration or addition to the Airport's common areas. Tenant shall, within thirty (30) days after written demand therefor, reimburse Landlord and all other tenants for the costs of all extra insurance premiums caused by Tenant's use of the Premises. Any such amounts shall be deemed to be additional rent hereunder.

5.4 TENANT'S OPERATIONAL COVENANTS (a) Affirmative Covenants: In regard to the use and occupancy of the Premises, Tenant will at its expense: either (1) keep the inside and outside of any glass in the doors and windows of the Buildings on the Premises reasonably clean; (2) replace promptly any cracked or broken glass of the Premises with glass of like kind and quality; (3) maintain the Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; (4) keep any garbage, trash, rubbish or other refuse in vermin-proof containers within the interior of the Premises until removed (and Tenant shall cause the Premises to be inspected and exterminated from time to time as circumstances may require; (5) keep all mechanical apparatus free of vibration and loud noise above that contemplated by the Permitted Use of the Premises and which may be transmitted beyond the Premises; and (6) comply with and observe all rules and regulations reasonably established by Landlord from time to time or cause the Owner(s) of Units in the Fitchburg Aircraft Condominium to comply with the same. (b) Negative Covenants: In regard to the use and occupancy of the Premises and common areas, Tenant will not permit: (7) the placement or maintenance any trash, refuse or other articles on those portions of the Premises outside of the units thereof, so as to obstruct any sidewalk or common area; (8) permit undue accumulations of or burn garbage, trash, rubbish or other refuse within or without the Premises; (9) cause or permit objectionable odors to emanate exceeding those contemplated by the Permitted Use to be dispelled from the Premises; or (10) permit commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant or occupant of the Fitchburg Municipal Airport, or use or permit the use of any portion of the Premises for any unlawful purpose. All laws, regulations and ordinances, and all amendments in existence now or made in the future thereto, including but not limited to the Airport Regulations and the Minimum Standards for Commercial Operations, are hereby incorporated and made part of this Lease. The Tenant, its officers, employees, Unit Owners, tenants, subtenants, contractors, subcontractors, agents, and

invitees shall comply with said laws, regulations and ordinances, and upon enactment, any amended provisions thereof. The Parties anticipate that during the Initial Term and the Extended Terms of this Lease, applicable laws, ordinances, regulations (including but not limited to the Airport Regulations and Minimum Standards for Commercial Operations) may be amended from time to time. Tenant shall comply with any and all such future laws, ordinances and regulations as they are enacted.

5.5 SIGNS Except as expressly permitted in this Section 5.5, Tenant shall not place any signs, placards, or the like on the Premises that will be visible from outside the Premises (including without limitation both interior and exterior surfaces of windows). Subject to Tenant obtaining all necessary approvals and permits therefor, Tenant may erect one (or more with permission of the Airport Manager) exterior sign in a location designated by Landlord containing Tenant's name and no advertising material. Plans and specifications, including, without limitation, artwork, for such sign must be submitted to Landlord for its written approval before installation, which approval shall not be unreasonably withheld. The costs of all signs and the installation thereof, including the costs of any required permits or approvals, shall be the responsibility of Tenant. The Tenant shall comply at its own expense with the requirements of all laws and regulations affecting the maintenance of Tenant's signs. Tenant shall remove all signs upon termination of this Lease and shall return the Premises to their condition prior to the placement or erection of said signs. Notwithstanding the foregoing, Landlord agrees to allow Tenant to maintain its current signage (if any).

5.6 HAZARDOUS MATERIALS Except as otherwise disclosed to the Landlord on Exhibit C to this Lease, the Tenant shall not use, handle, store or dispose of any oil, hazardous or toxic substances, materials or wastes (collectively "Hazardous Materials") in, under, on or about the Property except for (i) the storage and use of such materials, in accordance with applicable law and regulation in such reasonable amounts as shall customarily in connection with or the Permitted Use, (ii), the storage and use of other Hazardous Materials consented to by Landlord in advance which consent may be withheld in Landlord's sole and absolute discretion. Any Hazardous Materials in the Premises, and all containers therefor, shall be used, kept, stored and disposed of in conformity with all applicable laws, ordinances, codes, rules, regulations and orders of governmental authorities. If the transportation, storage, use or disposal of Hazardous Materials anywhere on the Property in connection with Tenant's use of the Premises results in (1) contamination of the soil or surface or ground water or (2) loss or damage to person(s) or property, then Tenant agrees (i) to notify Landlord immediately of any contamination, claim of contamination, loss in full compliance with all applicable statutes, regulations and standards, and (iii) to indemnify, defend and hold Landlord harmless from and against any claims, suits, causes of action, costs and fees, including, without limitation, attorneys' fees, arising from or connected with any such contamination, claim of contamination, loss or damage. This provision shall survive the termination of this Lease. No consent or approval of Landlord shall in any way be construed as imposing upon Landlord any liability for the means, methods, or manner of removal,



containment or other compliance with applicable law for and with respect to the foregoing. The terms of this Section 5.6 shall apply to any transportation, storage, use or disposal of Hazardous Materials irrespective of whether Tenant has obtained Landlord's consent therefor but nothing in this Lease shall limit or otherwise modify the requirement of obtaining Landlord's prior consent as set forth in the first sentence of this Section 5.6.

**ARTICLE VI  
INSTALLATIONS, ALTERATIONS AND ADDITIONS**

6.1 INSTALLATIONS, ALTERATIONS, AND ADDITIONS Tenant may make installations, alterations, additions or demolitions to the Premises provided that Landlord consents thereto in advance and in writing, which consent shall not be unreasonably withheld, delayed or conditioned. In no event shall Landlord's approval of any proposed installations, alterations, or additions to the Premises, whether in connection with Tenant's initial leasehold improvements or otherwise, constitute a representation by Landlord that such work complies with the requirements of any applicable law or regulation, including without limitation the requirements of the ADA. Any installations, alterations, or additions made by Tenant shall be at Tenant's sole cost and expense and shall be done in a good and workmanlike manner using materials of a quality at least equivalent to that of the existing improvements and in compliance with the requirements of Section 5.2; and prior to Tenant's use of the Premises, after the performance of any such work, Tenant shall procure certificates of occupancy and any other required certificates. Tenant shall not suffer or permit any mechanics' or similar liens to be placed upon the Premises for labor or materials furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed at the direction of Tenant, and shall cause any such lien to be released of record forthwith without cost to Landlord. At all times when any installation, alteration, or addition by Tenant is in progress, there shall be maintained, at Tenant's cost and expense, insurance meeting the requirements of Article XI below and certificates of insurance evidencing such coverage shall be furnished to Landlord prior to the commencement of any such work. Any installations, alterations or additions made by Tenant to the Premises, shall become the property of Landlord at the termination or expiration of this Lease as set forth in Section 3.4 above.

6.2 EXISTING STRUCTURES. Landlord acknowledges and agrees that the buildings presently located on the Premises have been approved by the Landlord and conform to the requirements of this Lease

**ARTICLE VII TRANSFERS**

7.1 PROHIBITION: Except as specified in Section 7.3 below, Tenant shall not, directly or indirectly, assign, mortgage, pledge or otherwise transfer, voluntarily or involuntarily, this Lease or any interest herein or sublet (which term, without limitation, shall include granting of

concessions, licenses, and the like) or allow any other person or entity to occupy the whole or any part of the Premises, without, in each instance, having first received the express consent of Landlord, which consent shall not be unreasonably withheld. Any assignment of this Lease or subletting of the whole or any part of the Premises (other than as permitted to a subsidiary or a controlling corporation as set forth below) by Tenant without Landlord's express consent shall be invalid, void and of no force or effect. This prohibition includes, without limitation, any assignment, subletting, or other transfer which would occur by operation of law, merger, consolidation, reorganization, acquisition, transfer or other change of Tenant's corporate or proprietary structure, including a change in the partners of any partnership, and the sale, pledge, or other transfer of any of the issued or outstanding capital stock of any corporate Tenant (unless such stock is publicly traded on a recognized security exchange or over-the-counter market). Any request for consent under this Section 7.1 shall set forth, in detail reasonably satisfactory to Landlord, the identification of the proposed assignee or sub-Tenant, its financial condition and the terms on which the proposed assignment or subletting is to be made, including, without limitation, the rent or any other consideration to be paid in respect thereto and such request shall be treated as Tenant's warranty in respect of the information submitted therewith.

In any case where Landlord shall consent to any assignment or subletting, Tenant originally named herein shall remain fully liable for Tenant obligations hereunder, including, without limitation, the obligation to pay the rent and other amounts provided under this Lease and such liability shall not be affected in any way by any future amendment, modification, or extension of this Lease or any further assignment, other transfer, or subleasing and Tenant hereby irrevocably consents to any and all such transactions. Tenant agrees to pay to Landlord, within fifteen (15) days of billing therefor, all reasonable legal and other out-of-pocket expenses incurred by Landlord in connection with any request to assign or sublet. It shall be a condition of the validity of any permitted assignment or subletting that the assignee or sublessee agree directly with Landlord, in form satisfactory to Landlord, to be bound by all Tenant obligations hereunder, including, without limitation, the obligation to pay all Rent and other amounts provided for under this Lease and the covenant against further assignment or other transfer or subletting.

Without limiting Landlord's discretion to grant or withhold its consent to any proposed assignment or subletting, if Tenant requests Landlord's consent to assign this Lease or sublet all or any portion of the Premises, Landlord shall have the option, exercisable by notice to Tenant given within thirty (30) days after Landlord's receipt of such request, to terminate this Lease as of the date specified in such notice which shall be not less than thirty (30) nor more than sixty (60) days after the date of such notice for the entire Premises, in the case of an assignment or subletting of the whole, and for the portion of the Premises, in the case of a subletting of a portion. In the event of termination in respect of a portion of the Premises, the portion so eliminated shall be delivered to Landlord on the date specified in good order and condition in the manner provided in Section 8.1 at the end of

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the Lease Term and thereafter, may have access to and may make modification to the Premises so as to make such portion a self-contained rental unit with access to common areas, elevators and the like.

Rent shall be adjusted according to the extent of the Premises for which this Lease is terminated. Without limitation of the rights of Landlord hereunder in respect thereto, if there is any assignment of this Lease by Tenant for consideration or a subletting of the whole of the Premises by Tenant at a rent which exceeds the rent payable hereunder by Tenant, or if there is a subletting of a portion of the Premises by Tenant at a rent in excess of the subleased portion's pro rata share of the Rent payable hereunder by Tenant, then Tenant shall pay to Landlord, as additional rent, forthwith upon Tenant's receipt of the consideration (or the cash equivalent thereof) therefor, in the case of an assignment, and in the case of a subletting, seventy-five percent (75%) of the amount of any such excess rent. The provisions of this paragraph shall apply to each and every assignment of this Lease and each and every subletting of all or a portion of the Premises except as set forth in Section 7.3 below, whether to a subsidiary or controlling corporation of Tenant or any other person, firm or entity, in each case on the terms and conditions set forth herein. For the purposes of this Section 7.1, the term "rent" shall mean all rent, additional rent or other payments and/or consideration payable by one party to another for the use and occupancy of all or a portion of the Premises.

The requirement of Landlord's prior consent and Landlord's recapture right shall not, however, be applicable to an assignment of this Lease by Tenant to a subsidiary (for such period of time as at least 50% of the stock of such subsidiary continues to be owned by Tenant, it being agreed that the subsequent sale or transfer of the stock of such subsidiary (either individually or in the aggregate) resulting in Tenant owning less than 50% of the stock of such subsidiary shall be treated as if such sale or transfer were, for all purposes, an assignment of this Lease governed by the provisions of this Section 7.1) or controlling corporation, provided (and it shall be a condition of the validity of any such assignment) that such subsidiary or controlling corporation agree directly with Landlord to be bound by all of the obligations of Tenant hereunder, including, without limitation, the obligation to pay the rent and other amounts provided for under this Lease, the covenant to use the Premises only for the purposes specifically permitted under this Lease and the covenant against further assignment; but such assignment shall not relieve Tenant herein named of any of its obligations hereunder, and Tenant shall remain fully liable therefor. Further, Landlord's consent shall not be required for an assignment of this Lease in connection with a transfer of substantially all operations of Tenant to another entity by way of merger, consolidation or sale of substantially all of the stock therein or assets thereof, provided that at the time of such assignment such entity has a net worth at least equal to that of Tenant or any guarantor on the date hereof or on the date of such assignment, whichever is greater.

This Paragraph 7.1 is not intended to interfere with the use of the Premises as a leasehold

condominium, and shall not apply to the sale of units by individual Unit Owners, shall not apply to the sale of an individual unit by Tenant after foreclosure thereon, and shall be interpreted in accordance with this intent and M.G.L. c. 183A §8A.

7.2 ACCEPTANCE OF RENT FROM TRANSFEREE The acceptance by Landlord of the payment of Rent, additional rent, or other charges following assignment, subletting, or other transfer prohibited by this Article VII shall not be deemed to be a consent by Landlord to any such assignment, subletting, or other transfer, nor shall the same constitute a waiver of any right or remedy of Landlord.

7.3 SALE OR LEASE OF UNITS BY TENANT. After the completion of any building or buildings, in compliance with all requirements set forth in this Lease, the Tenant or its Unit Owners may sell or lease units in such building to individual users. The documentation evidencing such sale or lease of each such unit shall be in writing and contain express language that, by the purchase or lease of such units, the user of each unit assumes, covenants and agrees to perform, jointly and in common with all the other aircraft storage unit users all the obligations, duties and liabilities of the Tenant set forth in this Lease. Tenant shall comply and shall cause its Unit Owners to comply with all applicable requirements of this Lease as set forth herein, including but not limited to maintaining insurance.

7.4 MORTGAGE BY TENANT It is anticipated by the parties to this Lease that Tenant or its successors or assigns may construct further improvements on the Premises and may seek Landlord's permission as in Section 7.1 to place a mortgage or mortgages on the Premises or various mortgages on parts of the Premises to finance such improvements. Tenant shall make all such requests in writing, and shall inform Landlord in writing of all such mortgages, pledges or hypothecations of this Lease. Such permission is not required, however, for Tenant's individual unit owners to place a mortgage or mortgages on their individual aircraft storage unit.

#### ARTICLE VIII REPAIRS AND MAINTENANCE

8.1 TENANT OBLIGATIONS From and after the date that possession of the Premises is delivered to Tenant and until the end of the Lease Term, Tenant shall keep the Premises and every part thereof in good order, condition, and repair, reasonable wear and tear and damage by casualty, as a result of condemnation, or as a result of the failure of Landlord to provide services required to be provided hereunder only excepted; and shall return the Premises to Landlord at the expiration or earlier termination of the Lease Term in such condition as set forth in Section 3.4 above. Notwithstanding any other provision in this Lease to the contrary, Tenant shall not be liable for any damage whatsoever to the Premises caused solely by any party other than the Tenant or its authorized agents, employees or invitees. If the tenant is partially responsible for any damage then

the tenant shall be held liable in an amount proportionate to its responsibility.

8.2 LANDLORD OBLIGATIONS Except as may be provided in Articles XII and XIII, Landlord agrees to keep in good order, condition, and repair the common areas serving the Premises, except that Tenant shall reimburse Landlord, as additional rent hereunder, for the costs of maintaining, repairing, or otherwise correcting any condition caused by an act, omission, neglect or default under this Lease of Tenant or any employee, agent, or contractor of Tenant or any other party for whose conduct Tenant is responsible. Without limitation, Landlord shall not be responsible to make any improvements or repairs other than as expressly provided in this Section 8.2, and Landlord shall not be liable for any failure to make such repairs unless Tenant has given notice to Landlord of the need to make such repairs and Landlord has failed to commence to make such repairs within a reasonable time thereafter. In the event that Landlord refuses to make such repairs within a reasonable time after notice by Tenant, Tenant may perform such repairs as it deems necessary and may deduct the cost thereof from the Rent due next after such repairs have been completed. This reasonable timeframe to make repairs shall include consideration of the time necessary to allow the landlord to comply with all public purchasing statutes, rules and regulations. Any repairs made by the tenant shall be done in accordance with any public construction statutes, rules and regulations to the extent the same are applicable to the tenant and project, and must be completed under the supervision and direction of the Airport Manager. If Landlord chooses to make improvements to the Airport, in its sole discretion, Landlord may assess an additional fee to Tenant for the costs incurred for such improvements, provided such assessments are applied equally and non-discriminatorily to all users of the airport unless specific circumstances, such as an improvement which solely benefits the Leased Premises, dictate otherwise. Landlord shall notify the Tenant in writing no less than six months before the assessment of such a fee, which shall be treated as Additional Rent hereunder. The assessment of such an additional fee shall not constitute a "Force Majeure" under Article 24.

8.3 SNOWPLOWING AND WEED CONTROL. The Landlord shall maintain the paved and stone apron areas of the Premises free from weeds and other vegetation by the application of herbicides or by other means and shall be responsible for the removal of snow and ice from all paved surfaces on the Premises in a non-discriminatory manner as to timing and so as to permit the same to be used for customary flight operations within a reasonable period of time after the accumulation of the same. In the event that Landlord fails to perform its obligations under this Section 8.3, Tenant may notify Landlord of its objection to such failure. In the event that such failure is not cured within a reasonable period of time, Tenant may take such measures as shall be necessary to correct such failure and the reasonable costs incurred by Tenant in taking such corrective measures shall be repaid by Landlord to Tenant within 10 days after submission of invoices for such work and if not repaid within such 10-day period, Tenant shall have the right to off-set such amount against the Base Rent, Additional Rent and/or other amounts due from Tenant



under the Lease until such costs and expenses have been fully reimbursed. In no event shall this reimbursement exceed the amount of the Additional Rent. Landlord reserves the right to terminate its obligations under this Section by reasonable advance written notice to Tenant, if, but only if, Landlord ceases to provide snowplowing and weed control for the entire Airport property, in which event (a) the Tenant's obligation to pay Additional Rent as provided in Section 4.1(c) above shall cease and (b). Tenant shall have the right to plow and store snow on the airport infield in accordance with prior practice and shall have no obligation to remove snow to an offsite location.

#### ARTICLE IX SERVICES TO BE FURNISHED BY LANDLORD; UTILITIES

9.1 LANDLORD'S SERVICES The Landlord agrees to cause the parking areas, and walkways and common areas on the Airport to be kept clear of accumulations of dirt, litter, rubbish, ice and snow, cause the landscaping on the Airport to be kept in a neat and attractive condition, keep the parking areas on the Airport lighted as necessary from the hours of 6:00 a.m. until 8:00 p.m. and perform its obligations with respect to maintenance and repair set forth in Section 8.2 above. Except as expressly set forth in the preceding sentence, Tenant acknowledges that this is a fully net lease and agrees to contract separately for all utilities and building and other services required for Tenant's use and occupancy of the Premises hereunder. Upon the request of Tenant from time to time, Landlord shall use reasonable efforts to provide services at hours other than the times set forth above and Tenant shall reimburse Landlord as additional rent for the cost of such services within thirty (30) days after invoice therefor.

9.2 CAUSES BEYOND CONTROL OF THE LANDLORD The Landlord shall in no event be liable for failure to perform any of its obligations under this Lease when prevented from doing so by causes beyond its reasonable control, including without limitation labor dispute, breakdown, accident, order or regulation of or by any governmental authority, or failure of supply, or inability by the exercise of reasonable diligence to obtain supplies, parts, or employees necessary to furnish services required under this Lease, or because of war or other emergency, or for any cause due to any act, neglect, or default of Tenant or Tenant's servants, contractors, agents, employees, licensees or any person claiming by, through or under Tenant, and in no event shall Landlord ever be liable to Tenant for any indirect, special or consequential damages under the provisions of this Section 9.2 or any other provision of this Lease. ~~In furtherance of the foregoing and not in limitation thereof, in no event shall Landlord be liable for the failure of a prior tenant of the Premises or any part thereof to vacate the Premises, and Tenant's sole and exclusive remedy on account thereof shall be an extension of the Term and Rent Commencement Dates for the amount of days by which the Term Commencement Date is delayed due to a previous tenant's failure to vacate the Premises or any portion thereof.~~

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9.3 SEPARATELY METERED UTILITIES Tenant shall pay directly to the utility, as they become due, all bills for electricity, gas, water and sewer, and other utilities (whether they are used for furnishing heat or for other purposes) that are furnished to the Premises and now or hereafter separately metered or billed by the utility to the Premises. If any utilities used or consumed by Tenant are not separately metered, Tenant shall pay its allocable share of such utilities, based on use, as reasonably determined by Landlord, which shall be considered "other charges" under Section 4.1(b) above. Barring unusual circumstances, an allocation of utilities which are not separately metered based on Tenant's proportional square footage of the structure within which the Premises lie shall be considered a reasonable allocation of such utility charges.

#### ARTICLE X INDEMNITY

10.1 THE TENANT'S INDEMNITY The Tenant shall indemnify and save harmless Landlord, the directors, officers, agents, and employees of Landlord, against and from all claims, expenses, or liabilities of whatever nature (a) arising directly or indirectly from any default or breach by Tenant or Tenant's contractors, licensees, agents, servants, or employees under any of the terms or covenants of this Lease (including without limitation any violation of Landlord's Rules and Regulations and any failure to maintain or repair equipment or installations to be maintained or repaired by Tenant hereunder) or the failure of Tenant or such persons to comply with any rule, order, regulation, or lawful direction now or hereafter in force of any public authority, in each case to the extent the same are related, directly or indirectly, to the Premises, or Tenant's use thereof; or (b) arising directly or indirectly from any accident, injury, or damage, however caused, to any person or property, on or about the Premises; or (c) arising directly or indirectly from any accident, injury, or damage to any person or property occurring outside the Premises but on the Airport, where such accident, injury, or damage results, or is claimed to have resulted, from any act, omission, or negligence on the part of Tenant, or Tenant's contractors, licensees, agents, servants, employees or customers, or anyone claiming by or through Tenant: provided, however, that in no event shall Tenant be obligated under this clause (c) to indemnify Landlord, the directors, officers, agents, or employees of Landlord, to the extent such claim, expense, or liability results from any omission, fault, negligence, or other misconduct of Landlord or the officers, agents, or employees of Landlord on or about the Premises.

This indemnity and hold harmless agreement shall include, without limitation, indemnity against all expenses, attorney's fees and liabilities incurred in connection with any such claim or proceeding brought thereon and the defense thereof with counsel reasonably acceptable to Landlord. At the request of Landlord, Tenant shall defend any such claim or proceeding directly on behalf and for the benefit of Landlord.

10.2 THE TENANT'S RISK The Tenant agrees to use and occupy the Premises and common

areas of the Airport as Tenant is herein given the right to use at Tenant's sole risk; and Landlord shall have no responsibility or liability for any loss or damage, however caused, to furnishings, fixtures, equipment, or other personal property of Tenant or of any persons claiming by, through, or under Tenant except to the extent caused by Landlord or its contractors, licensees, agents, servants, employees or customers, or anyone claiming by, through or under Landlord.

10.3 INJURY CAUSED BY THIRD PARTIES The Tenant agrees that Landlord shall not be responsible or liable to Tenant, or to those claiming by, through, or under Tenant, for any loss or damage resulting to Tenant or those claiming by, through, or under Tenant, or its or their property, that may be occasioned by or through the acts or omissions of others using the Airport, or for any loss or damage from the breaking, bursting, crossing, stopping, or leaking of electric cables and wires, and water, gas, sewer, or steam pipes, or like matters, except as such injury may be caused in whole or in part by the negligent acts or omissions of the Landlord, its employees, agents or assigns. If the Landlord is partially responsible for any damage then the Landlord shall be held liable in an amount proportionate to its responsibility.

10.4 SECURITY Tenant agrees that, in all events, Tenant is responsible for providing security to the Premises and its own personnel.

10.5 COMMON AREAS AND FACILITIES OF THE CONDOMINIUM. Based upon a representation from the Tenant that Tenant is organized as an Organization of Unit Owners as defined Massachusetts General Laws, Chapter 183A, the parties agree, for claims arising out of common areas and facilities of the buildings upon the Premises, the individual aircraft storage unit users' obligation to indemnify the City under this Lease shall not exceed the limitations of G. L. c. 183A, Sec. 13. Additionally, the parties agree that the foregoing does not limit or reduce the responsibilities, duties, or obligations of the Tenant, as set forth elsewhere herein

#### ARTICLE XI INSURANCE

11.1 PUBLIC LIABILITY INSURANCE The Tenant agrees to maintain in full force from the date upon which Tenant first enters the Premises for any reason, throughout the Lease Term, and thereafter so long as Tenant is in occupancy of any part of the Premises, (a) a policy of commercial general liability insurance, written on an occurrence basis and including contractual liability coverage to cover any liabilities assumed under this Lease, insuring against all claims for injury to or death of persons or damage to property on or about the Premises or arising out of the use of the Premises, including products liability, and completed operations liability, and (b) automobile liability insurance covering all owned vehicles, hired vehicles and all other non-owned vehicles. Each such policy shall designate Tenant as a named insured, shall be reasonably

satisfactory to Landlord, including, without limitation, the amount of any deductible thereunder, and Landlord, its managing agent, if any, and any mortgagees (as may be set forth in a notice given from time to time by Landlord) shall be named as additional insureds, as their interests appear.

Each such policy shall expressly provide that it shall not expire or be amended or canceled without at least thirty (30) days' prior written notice to Landlord in each instance and that the interests of Landlord thereunder or therein shall not be affected by any breach by Tenant of any policy provision, and a duplicate original or certificate thereof shall be delivered to Landlord. The minimum limits of liability of such insurance shall be bodily injury and property damage combined single limit of \$1,000,000 per occurrence. The Landlord shall have the right from time to time to increase such minimum limits upon notice to Tenant, provided that any such increase shall provide for coverage in amounts similar to like coverage being carried on like property in the greater Worcester County.

11.2 HAZARD INSURANCE The Tenant agrees to maintain in full force from the date upon which Tenant first enters the Premises for any reason, throughout the Lease Term, and thereafter so long as Tenant is in occupancy of any part of the Premises, a policy, reasonably satisfactory to Landlord, including, without limitation, the amount of any deductible thereunder, insuring any leasehold improvements paid for by Tenant and all fixtures, equipment, and other personal property of Tenant against damage or destruction by fire or other casualty in an amount equal to the full replacement cost of such property. Tenant shall also maintain insurance against such other hazards as may from time to time reasonably be required by Landlord or the holder of any mortgage on the Premises, provided that such insurance is customarily carried in the area in which the Premises are located on similar property and that Tenant receives written notice specifying all such additional insurance as may be required. At Landlord's request, any such policies of insurance shall name any such mortgagee as loss payee under a standard mortgagee's clause. Notwithstanding any other provision to the contrary, the amount of such insurance, if any, for Tenant's Personal property is and shall be at Tenant's sole discretion.

#### ARTICLE XII CASUALTY

12.1 DEFINITION OF "SUBSTANTIAL DAMAGE" AND "PARTIAL DAMAGE" The term "substantial damage," as used herein, shall refer to damage which is of such a character that in Landlord's reasonable, good faith estimate the same cannot, in ordinary course, be expected to be repaired within 60 calendar days from the time that such repair work would commence. Any damage which is not "substantial damage" is "partial damage."

12.2 PARTIAL DAMAGE TO THE AIRPORT If during the Lease Term there shall be partial

damage to the Airport by fire or other casualty and if such damage shall materially interfere with Tenant's use of the Premises as contemplated by this Lease, Landlord shall promptly proceed to restore the Airport to substantially the condition in which it was immediately prior to the occurrence of such damage.

12.3 SUBSTANTIAL DAMAGE TO THE AIRPORT If during the Lease Term there shall be substantial damage to the Airport by fire or other casualty and if such damage shall materially interfere with Tenant's use of the Premises as contemplated by this Lease, Landlord shall promptly restore the Airport to the extent reasonably necessary to enable Tenant's use of the Premises, unless Landlord, within ninety (90) days after the occurrence of such damage, shall give notice to Tenant of Landlord's election to terminate this Lease. The Landlord shall have the right to make such election in the event of substantial damage to the Airport whether or not such damage materially interferes with Tenant's use of the Premises. If Landlord shall give such notice, then this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof. If Landlord has not restored the Airport to the extent required under this Section 12.3 within nine (9) months after the date of such damage or destruction, such nine month period to be extended to the extent of any delays of the completion of such restoration due to matters beyond Landlord's reasonable control, or if the Airport shall be substantially damaged during the last nine (9) months of the Lease Term then, in either such case, Tenant may elect to terminate this Lease by giving written notice of such election to Landlord within thirty (30) days after the end of such nine-month period and before the substantial completion of such restoration. If Tenant so elects to terminate this Lease, then this Lease and the term hereof shall cease and come to an end on the date that is thirty (30) days after the date that Landlord receives Tenant's termination notice, unless on or before such date Landlord has substantially completed such restoration. Upon such termination, damages shall be calculated in accordance with Article XXV.

12.4 ABATEMENT OF RENT If during the Lease Term the Airport shall be damaged by fire or casualty and if such damage shall materially interfere with Tenant's use of the Premises or with the use of the Airport for customary aviation purposes as contemplated by this Lease, a just proportion of the Base Rent payable by Tenant hereunder shall abate proportionately for the period in which, by reason of such damage, there is such interference with Tenant's use of the Premises, having regard to the extent to which Tenant may be required to discontinue Tenant's use of the Premises, but such abatement or reduction shall end if and when Landlord shall have substantially restored the Airport or so much thereof as shall have been originally constructed by Landlord (exclusive of any of Tenant's improvements) to substantially the condition in which the Premises were prior to such damage.

12.5 MISCELLANEOUS In no event shall Landlord have any obligation to make any repairs



or perform any restoration work under this Article XII if prevented from doing so by reason of any cause beyond its reasonable control, including, without limitation, the requirements of any applicable laws, codes, ordinances, rules, or regulations, the refusal of the holder of a mortgage or ground lease affecting the premises to make available to Landlord the net insurance proceeds attributable to such restoration, or the inadequacy of such proceeds to fund the full cost of such repairs or restoration, but reasonably promptly after Landlord ascertains the existence of any such cause, it shall either terminate this Lease or waive such condition to its restoration obligations and proceed to restore the Premises as otherwise provided herein. Further, Landlord shall not be obligated in any event to make any repairs or perform any restoration work to any alterations, additions, or improvements to the Premises performed by or for the benefit of Tenant (all of which Tenant shall repair and restore) or to any fixtures in or portions of the Premises or the Airport which were constructed or installed by or for some party other than Landlord or which are not the property of Landlord. Upon substantial damage to the Premises which materially interferes with Tenant's use of the Premises as contemplated under this Lease, the Tenant may elect to terminate this Lease rather than repair or restore the Premises, but would have the right to clean the Premises and remove debris. In such case, no damages for the remaining term of the Lease would be payable.

12.6 TEMPORARY SPACE. In the event of damage to the Airport, whether Partial or Substantial as defined herein, the Landlord shall make every effort reasonable to provide Tenant temporary space at the Fitchburg Municipal Airport from which it may conduct its Permitted Uses until the Tenant may reoccupy the Premises, or this Lease is otherwise terminated under the provisions hereof. Nothing herein will require Tenant to be relocated to any portion of the airport which is not approved for occupancy under Tenant's particular use.

#### ARTICLE XIII EMINENT DOMAIN

13.1 RIGHTS OF TERMINATION FOR TAKING If the Premises, or such portion thereof as to render the balance (if reconstructed to the maximum extent practicable in the circumstances) physically unsuitable for Tenant's purposes, shall be taken (including a temporary taking in excess of 180 days) by condemnation or right of eminent domain or sold in lieu of condemnation, Landlord or Tenant may elect to terminate this Lease by giving notice to the other of such election not later than thirty (30) days after Tenant has been deprived of possession.

Further, if so much of the Premises shall be so taken, condemned or sold or shall receive any direct or consequential damage by reason of anything done pursuant to public or quasi-public authority such that continuation of this Lease would, in Landlord's opinion, be uneconomical for Landlord, Landlord may elect to terminate this Lease by giving notice to Tenant of such election not later than thirty (30) days after the effective date of such taking.

13.2 PAYMENT OF AWARD Nothing contained herein shall be construed to prevent Tenant from prosecuting in any condemnation proceedings a claim for the value of any of Tenant's improvements on the Premises by Tenant at Tenant's expense and for relocation expenses.

13.3 ABATEMENT OF RENT In the event of any such taking of the Premises, the Base Rent or a fair and just proportion thereof, according to the nature and extent of the damage sustained, shall be suspended or abated, as appropriate and equitable in the circumstances.

#### ARTICLE XIV DEFAULT

The provisions of this Article XIV are subject to the rights of individual unit owners contained in M.G.L. c. 183A, §8.

##### 14.1 TENANT'S DEFAULT

(a) If at any time any one or more of the following events (herein referred to as a "Default of Tenant") shall occur:

- (i) Tenant shall fail to make payment of rent or any other monetary amount due under this lease within five (5) days after Landlord has sent to Tenant notice of such default. However, if: (A) Landlord shall have sent to Tenant a notice of such default, even though the same shall have been cured and this Lease not terminated; and (B) during the lease year in which said notice of default has been sent by Landlord to Tenant, Tenant thereafter shall default in any monetary payment, the same shall be deemed to be a Default of Tenant upon Landlord giving Tenant written notice thereof, within the five (5) day grace period set forth above; or
- (ii) Tenant shall fail to perform or observe any other covenant or provision herein contained on Tenant's part to be performed or observed and Tenant shall fail to remedy the same within thirty (30) days after notice to Tenant specifying such neglect or failure, or, if such failure is of such a nature that Tenant cannot reasonably remedy the same within such thirty (30) day period, Tenant shall fail to commence promptly to remedy the same and to prosecute such remedy to completion with diligence and continuity.

However, if (A) Landlord shall have sent to Tenant two notices of such default, even though the same shall have been cured and this Lease is not terminated; and (B) during the lease year in which said notices of default have been sent by Landlord to Tenant, and the Tenant thereafter shall default in any nonmonetary matter, the same shall be deemed to be a Default of Tenant upon Landlord giving Tenant written notice thereof, and Tenant shall have a ten (10) day grace period within which to

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cure the same; or

(iii) ~~except as otherwise provided by applicable law, if the estate hereby created shall be taken on execution or by other process of law, or if Tenant shall be judicially declared bankrupt or insolvent according to law, or if any assignment shall be made of the property of Tenant for the benefit of creditors, or if a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of Tenant's property by a court of competent jurisdiction, or if a petition shall be filed for the reorganization of Tenant under any provisions of law now or hereafter enacted, and such proceeding is not dismissed within sixty (60) days after it is begun, or if Tenant shall file a petition for such reorganization, or for arrangements under any provisions of such laws providing a plan for a debtor to settle, satisfy or extend the time for the payment of debts; or~~

(iv) Tenant shall vacate or abandon the Premises, then, in any such case, Landlord may, in addition to any remedies otherwise available to Landlord, immediately or at any time thereafter, and without demand or notice, enter into and upon the Premises or any part thereof in the name of the whole and repossess the same as of Landlord's former estate, and expel Tenant and those claiming by, through or under it and remove its or their effects (forcibly if necessary) without being deemed guilty of any manner of trespass, and without prejudice to any remedies that might otherwise be used for arrears of rent or preceding breach of covenant and/or Landlord may terminate this Lease by notice to Tenant and this Lease shall come to an end on the date of such notice as fully and completely as if such date were on the date herein originally fixed for the expiration of all terms of this Lease (Tenant hereby waiving any rights of redemption, if any, under G.L. c. 186, § 11 to extent that such rights may be lawfully waived), and Tenant will then quit and surrender the Premises to Landlord, but Tenant shall remain liable as herein provided. To the extent permitted by law, Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed, or in the event of Landlord obtaining possession of the Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease. In the event of any such termination, entry or re-entry, Landlord shall have the right to remove and store Tenant's property and that of persons claiming by, through or under Tenant at the sole risk and expense of Tenant and, if Landlord so elects, to sell such property at public auction or private sale and apply the net proceeds to the payment of all sums due to Landlord from Tenant and pay the balance, if any, to Tenant, or to dispose of such property in any manner in which Landlord shall elect, Tenant hereby agreeing to the fullest extent permitted by law that it shall have no right, title or interest in any property remaining in the Premises after such termination, entry or reentry.

(b) Tenant covenants and agrees, notwithstanding any termination of this Lease as aforesaid or any entry or reentry by Landlord, whether by summary proceedings, termination or otherwise,

to pay and be liable for on the days originally fixed herein for the payment thereof, amounts equal to the several installments of Rent and other charges reserved as they would become due under the terms of this Lease if this Lease had not been terminated or if Landlord had not entered or re-entered, as aforesaid, and whether the Premises be re-let or remain vacant, in whole or in part, or for a period less than the remainder of the Term, or for the whole thereof; but in the event the Premises be re-let by Landlord, Tenant shall be entitled to a credit in the net amount of rent received by Landlord in re-letting, after deduction of all expenses incurred in re-letting the Premises (including, without limitation, remodeling costs, brokerage fees, attorney fees and the like), and in collecting the rent in connection therewith. As an alternative, at the election of Landlord, Tenant will upon such termination pay to Landlord, as damages, such a sum as at the time of such termination represents the amount of the excess, if any, of the then value of the total Rent and other benefits that would have accrued to Landlord under this Lease for the remainder of the Lease Term if the lease terms had been fully complied with by Tenant over and above the then cash rental value (in advance) of the Premises for what would be the then unexpired Lease Term if the same remained in effect.

(c) In case of any Default of Tenant, reentry, entry, expiration and dispossession by summary proceedings or otherwise, Landlord may (i) re-let the Premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms that may at Landlord's option be equal to or less than or exceed the period that would otherwise have constituted the balance of the Lease Term and may grant concessions or free rent to the extent that Landlord considers advisable or necessary to re-let the Premises and (ii) make such alterations, repairs and decorations in the Premises as Landlord, in its sole judgment, considers advisable or necessary for the purpose of re-letting the Premises; and no action by Landlord in accordance with the foregoing shall operate or be construed to release Tenant from liability hereunder as aforesaid. It is specifically understood and agreed that Landlord shall be entitled to take into account in connection with any re-letting of the Premises all relevant factors that would be taken into account by a sophisticated developer in securing a replacement tenant for the Premises. Landlord shall in no event be liable in any way whatsoever for failure to re-let the Premises, or, in the event that the Premises are re-let, for failure to collect the rent under such re-letting, and Tenant hereby waives, to the extent permitted by applicable law, any obligation Landlord may have to mitigate Tenant's damages. The Landlord agrees to list the Premises with a broker in the event of a termination, entry or reentry under this Article XIV, provided that Landlord's obligation to list the Premises as provided herein is independent of Tenant's obligations under this Article XIV and shall not be construed to entitle Tenant to set-off against any amounts payable by Tenant hereunder in the event of a breach or alleged breach by Landlord of such obligation. In no event shall Landlord be obligated to give priority to the re-letting of the Premises over any other premises owned by Landlord.

~~(d) If there is at any time a guarantor or assignee of this Lease or any interest of Tenant herein or any sublessee, franchisee, concessionee or licensee of all or any portion of the Premises, the~~

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~~happening of any of the events described in paragraph (a)(iii) of this Section with respect to such guarantor, assignee, sublessee, franchisee, concessionee or licensee shall constitute a Default of Tenant hereunder.~~

(e) The specified remedies to which Landlord may resort hereunder are not intended to be exclusive of any remedies or means of redress to which Landlord may, at any time, be entitled lawfully and Landlord may invoke any remedy (including the remedy of specific performance) allowed at law or in equity as if specific remedies were not herein provided for.

(f) All costs and expenses incurred by or on behalf of Landlord (including, without limitation, attorney fees and expenses) in enforcing its rights hereunder or occasioned by any Default of Tenant shall be paid by Tenant.

(g) Upon any Default of Tenant, or the expiration or termination of this Lease, Landlord shall have the right of summary process under G.L. c. 239, or other applicable statutes, and such other rights to recover possession as permitted by law. Tenant and Landlord each hereby waives any and all rights under the laws of any state to the right, if any, to trial by jury. Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy, insolvency or like proceedings by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater than, equal to or less than the amount of the loss or damages referred to above.

(h) Notwithstanding any provision herein, LANDLORD shall have a duty to mitigate any losses or damages

14.2 LANDLORD'S DEFAULT Landlord shall in no event be in default in the performance of any of Landlord's obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days, or such additional time as is reasonably required to correct any such default, after notice by Tenant to Landlord specifying wherein Landlord has failed to perform any such obligation.

#### ARTICLE XV THE LANDLORD'S ACCESS TO PREMISES

15.1 THE LANDLORD'S RIGHT OF ACCESS The Landlord and its agents, contractors and employees shall have the right to enter the Premises at all reasonable hours upon reasonable advance notice, except in exigent circumstances, or any time in case of emergency, for the purpose of inspecting or of making repairs or alterations, to the Premises, and Landlord shall also have the right to make access available at all reasonable hours to prospective or existing mortgagees or purchasers of any part of the Premises. ~~To assure access by Landlord to the~~

~~Premises, Tenant shall provide Landlord with duplicate copies of all keys used by Tenant in providing access to the Premises.~~

For a period commencing twelve (12) months prior to the expiration of the Lease Term, Landlord may have reasonable access to the Premises at all reasonable hours for the purpose of exhibiting the same to prospective tenants.

#### **ARTICLE XVI RIGHTS OF MORTGAGEES**

##### **16.1 SUBORDINATION AND ATTORNMENT**

(a) Forthwith upon the request of Landlord or the holder of any mortgage or deed of trust affecting the Premises, Tenant shall execute and deliver to such party an attornment agreement providing that Tenant shall attorn to such holder or lessor in the event of a foreclosure of such mortgage or deed of trust or transfer in lieu thereof or a termination of such ground lease and incorporating such other terms and conditions as such party may reasonably require, provided that such agreement includes an agreement by such other party to recognize the rights of Tenant under this Lease. Irrespective of whether any such attornment agreement has been executed, Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under, any mortgage or deed of trust made by Landlord, its successors or assigns, encumbering the Premises, or any part thereof or upon any grant of a deed in lieu of foreclosure and recognize such purchaser as Landlord under this Lease.

(b) Tenant agrees on request of Landlord to execute and deliver from time to time any instrument that Landlord may reasonably deem necessary to implement the provisions of this Section 16.1.

**16.2 NOTICE TO MORTGAGEE; OPPORTUNITY TO CURE** After receiving notice from any person, firm or other entity (or from Landlord on behalf of any such person, etc.) that it holds a mortgage that includes the Premises as part of the mortgaged premises, no notice from Tenant to Landlord shall be effective unless and until a copy of the same is given to such holder, and the curing of any of Landlord's defaults by such holder shall be treated as performance by Landlord. Accordingly, no act or failure to act on the part of Landlord that would entitle Tenant under the terms of this Lease, or by law, to be relieved of Tenant's obligations hereunder shall have such an effect unless and until:

(a) Tenant shall have first given written notice to such holder, if any, specifying the act or failure to act on the part of Landlord that could or would give basis to Tenant's rights; and



- (b) Such holder, after receipt of such notice, has failed or refused to correct or cure the condition complained of within a reasonable time thereafter, but nothing contained in this Section 16.2 or elsewhere in this Lease shall be deemed to impose any obligation on any such holder to correct or cure any such condition.

16.3 ASSIGNMENT OF RENTS With reference to any assignment by Landlord of Landlord's interest in this Lease, or the rents payable hereunder, conditional in nature or otherwise, which assignment is made to the holder of a mortgage on property that includes the Premises, Tenant agrees:

- (a) that the execution thereof by Landlord, and the acceptance thereof by the holder of such mortgage, shall never be treated as an assumption by such holder of any of the obligations of Landlord hereunder, unless such holder shall, by notice sent to Tenant, specifically otherwise elect; and (b) that, except as aforesaid, such holder shall be treated as having assumed Landlord's obligations hereunder only upon foreclosure of such holder's mortgage and the taking of possession of the Premises.

#### **ARTICLE XVII EMERGENCY TERMINATION OR SUSPENSION BY LANDLORD**

17.1 EMERGENCY TERMINATION Notwithstanding any provision to the contrary, if, in the Landlord's sole discretion, there is an emergency situation, including but not limited to a danger to public health or safety, a danger to public or private property, a danger to public air travel, a failure to comply with any federal, state or local law, or FAA or Massachusetts DOT Aeronautics Division regulation such that the Fitchburg Municipal Airport could be ordered closed, whether temporarily or permanently, or could be fined or otherwise penalized, the Landlord may, without waiving any other right or remedy it may have, terminate or suspend this Lease, in whole or in part, and shall be required to give only such notice as was actually given. In such event, Rent and other payments shall be suspended or abated in proportion to the diminution of rights of the Tenant. By such action, neither the Landlord nor the City of Fitchburg shall be liable to the Tenant, or to any of its officers, employees, tenants, subtenants, contractors, subcontractors, agents, invitees, or any other individual or entity related thereto. In the event of such termination or suspension, the Landlord and its designee may take over all or any portion of the services being provided under this Lease by the Tenant unless Landlord's action is determined by a court of competent jurisdiction to have been arbitrary or capricious and not supported by fact.

17.2 PRECLUSION OF DAMAGES The Landlord's suspension or termination of this Lease, in whole or in part, in accordance with this Section shall preclude the Tenant's recovery of damages against the Landlord or the City of Fitchburg or their respective officers, attorneys, employees or agents, relating to or arising from said suspension or termination, including but not limited to any and all costs of relocation, lost profits, lost opportunity, or any other direct, indirect, consequential, or incidental loss.

#### **ARTICLE XVIII FEDERAL AVIATION ADMINISTRATION REQUIREMENTS**

18.1 **NONEXCLUSIVE USE** Nothing herein contained shall be construed to grant to Tenant any exclusive right to the use of the Fitchburg Municipal Airport or any of its facilities within the meaning of Section 308 of the Federal Aviation Act of 1958, nor shall anything contained herein be construed to prevent Landlord from entering into a similar lease with any other person, firm or corporation; except that the Tenant and its Unit Owners shall have the exclusive right to use the interior of the structures on the Premises for their intended use, subject to the applicable terms and provisions of this Lease.

18.2 **SUBORDINATION** This Lease shall be subordinate to the provision of any existing or future agreements and grant assurances between Landlord and the United States of America and/or the Commonwealth of Massachusetts relative to the Airport. Tenant acknowledges that it is aware of all such agreements and grant assurances or has the ability to request the same from Landlord. This shall specifically include, but shall not be limited to, Executive Order 13513 and DOT Order 3902.10 on Text Messaging While Driving, under which Tenant is encouraged to:

- (a) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Tenant.
- (b) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
  - i. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
  - ii. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

18.3 **NATIONAL EMERGENCY** During the time of war or other national emergency declared by the President of the United States, Landlord shall have the right to lease the landing area and other facilities of the Fitchburg Municipal Airport or any part thereof to the United States for military or normal use for the duration of such national emergency. The term of the Lease, insofar as it is inconsistent with the terms of any such lease entered into with the United States or the Commonwealth of Massachusetts, shall be suspended during the period of such national emergency.

Tenant shall have the option, at any time during such period of national emergency, of terminating the Lease by giving Landlord ninety (90) days advance notice of its intention to terminate by certified mail.

#### **ARTICLE XIX FEDERALLY REQUIRED NON-DISCRIMINATION PROVISION**

19.1 **NONDISCRIMINATION** The Tenant for itself, its personal representatives, successor

in interest and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the Premises, that, (1) no person on the grounds of race, color, gender, religion, national origin or other protected class shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such Premises and the furnishings of services thereon, no person on the grounds of race, color, gender, religion, national origin or other protected class shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A Office of the Secretary of State, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

19.2 SERVICES AND CHARGES. Tenant agrees that in the exercise of the rights and privileges herein granted for the furnishing of aeronautical services to the public that it shall:

- (a) Furnish said services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and
- (b) Charge a fair, reasonable, and not unjustly discriminatory price for each unit or service; provided, that the Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

19.3 REMEDY In the event of a breach of any of the above non-discrimination covenants, after forty-five (45) days' written notice remaining uncured, Landlord shall have the right to terminate the Lease, and to reenter and repossess the said Premises and all facilities and improvements thereon, and hold the same as if the Lease had never been made or issued.

#### ARTICLE XX TENANT'S USE OF AIRPORT

20.1 AIRPORT USE Tenant agrees that Tenant shall comply with the laws, rules and regulations of the Federal Aviation Administration (FAA) and the Massachusetts Aeronautics Commission (MAC).

#### ARTICLE XXI INGRESS AND EGRESS

21.1 ACCESS Tenant and the Unit Owners shall have at all times the full and free right of ingress and egress to the Premises and the improvements and facilities referred to herein, for the Tenant, the Unit Owners and their employees, guests, and other invitees, including persons supplying materials or furnishing services to Tenant and also, including the use of vehicles, machinery and

equipment reasonably required for such supply or service.

**ARTICLE XXII  
AGENCY**

**22.1 NO AGENCY** Tenant shall not at any time during the period of this Lease or any extension thereof act as agent, servant, or employee of the Landlord, unless requested and duly authorized by the Fitchburg Airport Commission

**ARTICLE XXIII MISCELLANEOUS  
PROVISIONS**

**23.1 CAPTIONS** The captions throughout this Lease are for convenience or reference only and shall in no way be held or deemed to define, limit, explain, describe, modify, or add to the interpretation, construction, or meaning of any provision of this Lease.

**23.2 BIND AND INURE** Except as herein otherwise expressly provided, the obligations of this Lease shall run with the land, and this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. ~~The reference herein to successors and assigns of Tenant is not intended to constitute a consent to assignment by Tenant, but has reference only to those instances in which Landlord may later give consent to a particular assignment as required by the provisions of Article VII.~~ Neither the assignment by Landlord of its interest in this Lease as security to a lender holding a mortgage, nor the acceptance thereof by such lender, nor the exercise by such lender of any of its rights pursuant to said assignment shall be deemed in any way an assumption by such lender of any of the obligations of Landlord hereunder unless such lender shall specifically otherwise elect in writing or unless such lender shall have completed foreclosure proceedings under said mortgage. Whenever the Premises are owned by a trustee or trustees, the obligations of Landlord shall be binding upon Landlord's trust estate, but not upon any trustee, beneficiary or shareholder of the trust individually.

**23.3 NO WAIVER** The failure of Landlord or of Tenant to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Lease shall not be deemed to be a waiver of such violation or to prevent a subsequent act, which would originally have constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of Rent or additional rent with knowledge of the breach of any covenant of this Lease shall not be deemed to be a waiver of such breach by Landlord unless such waiver be in writing signed by Landlord. No consent or waiver, express or implied, by Landlord or Tenant to or of any breach of any agreement or duty shall be construed as a waiver or consent to or of any other breach of the same or any other agreement or duty.

23.4 NO ACCORD AND SATISFACTION No acceptance by Landlord of a lesser sum than the minimum and additional rent then due shall be deemed to be other than on account of the earliest installment of such rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed to be an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy in this Lease or at law or in equity provided.

23.5 CUMULATIVE REMEDIES The specific remedies to which Landlord may resort under the terms of this Lease are cumulative and not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any breach or threatened breach by Tenant of any provisions of this Lease. In addition to the other remedies provided in this Lease, Landlord shall be entitled to the restraint by injunction of the violation or attempted or threatened violation of any of the covenants, conditions or provisions of this Lease or to a decree compelling specific performance of any such covenants, conditions or provisions. Except as otherwise set forth herein, any obligations of Tenant as set forth herein (including, without limitation, rental and other monetary obligations, repair obligations and obligations to indemnify Landlord) shall survive the expiration or earlier termination of this Lease, and Tenant shall immediately reimburse Landlord for any expense incurred by Landlord in curing Tenant's failure to satisfy any such obligation (notwithstanding the fact that such cure might be effected by Landlord following the expiration or earlier termination of this Lease).

23.6 PARTIAL INVALIDITY If any term or provision of this Lease or any portion thereof or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Lease and of such term or provision and the those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

23.7 LANDLORD'S RIGHT TO CURE If Tenant shall at any time default in the performance of any obligation under this Lease, Landlord shall have the right, but not the obligation, to enter upon the Premises and/or to perform such obligation, notwithstanding the fact that no specific provision for such substituted performance by Landlord is made in this Lease with respect to such default. In performing any such obligations, Landlord may make any payment of money or perform any other act. All sums so paid by Landlord (together with interest at the Lease Interest Rate) and all necessary incidental costs and expenses in connection with the performance of any such act by Landlord, shall be deemed to be additional rent under this Lease and shall be payable to Landlord immediately on demand. Landlord may exercise the foregoing rights without waiving any other of its rights or releasing Tenant from any of its obligations under this Lease.

23.8 ESTOPPEL CERTIFICATES

(a) Tenant agrees on the Term Commencement Date and from time to time thereafter, upon not less than fifteen (15) days' prior written request by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing, certifying that this Lease is unmodified and in full force and effect, that Tenant has no defenses, offsets or counterclaims against its obligations to pay rent and other charges required under this Lease and to perform its other covenants under this Lease and that to the best of Tenant's knowledge having made reasonable inquiry, there are no uncured defaults of Landlord or Tenant under this Lease (or, if there have been any modifications, that this Lease is in full force and effect, as modified, and stating the modifications, and, if there are any defenses, offsets, counterclaims or defaults, setting them forth in reasonable detail), and the dates to which the Rent and other charges have been paid. Any such statement delivered pursuant to this Section 23.8(a) may be relied upon by any prospective purchaser or mortgagee of the property which includes the Premises or any prospective assignee of any such mortgagee.

(b) Landlord agrees, upon not less than fifteen (15) days' prior written request by Tenant or any Unit Owner, to execute, acknowledge and deliver to the requesting party, a statement in writing, certifying that this Lease is unmodified and in full force and effect, and that to the best of Landlord's knowledge having made reasonable inquiry, there are no uncured defaults of the Tenant or the Requesting Unit Owner, or if there are any uncured defaults, setting them forth in reasonable detail. Any such statement delivered pursuant to this Section 23.8(b) may be relied upon by any prospective purchaser or mortgagee of any unit of the Fitchburg Airport Condominium.

23.9 BROKERAGE Each party hereto warrants and represents that it has dealt with no real estate broker or agent in connection with this transaction and agrees to defend, indemnify and save the other party harmless from and against any and all claims for commissions or fees arising out of this Lease which, as to the respective parties, are inconsistent with such party's warranties and representations. Landlord shall be responsible for any commissions or fees owed to any Broker in connection with this transaction in accordance with a separate agreement between Broker and Landlord.

23.10 ENTIRE AGREEMENT. All negotiations, considerations, representations, and understandings between Landlord and Tenant are incorporated herein and this Lease expressly supersedes any proposals or other written documents relating hereto. This Lease may be modified or altered only by written agreement between Landlord and Tenant, and no act or omission of any employee or agent of Landlord shall alter, change, or modify any of the provisions hereof.

23.11 HOLDOVER. If Tenant remains in the Premises after the termination of this Lease, by its own terms or for any other reason, such holding over shall not be deemed to create any tenancy,



but Tenant shall be a tenant at sufferance only, at a daily rate equal to one hundred ten percent (110%) of the Rent applicable immediately prior to such termination plus the then applicable additional rent and other charges under this Lease for the first year of holdover, and thereafter at a daily rate equal to one hundred and fifty percent (150%) of the Rent applicable immediately prior to such termination plus the then applicable additional rent and other charges under this Lease. Tenant shall also pay to Landlord all damages, direct or indirect, sustained by Landlord by reason of any such holding over. Otherwise, such holding over shall be on the terms and conditions set forth in this Lease as far as applicable.

23.12 COUNTERPARTS. This Lease is executed in any number of counterparts, each copy of which is identical, and any one of which shall be deemed to be complete in itself and may be introduced in evidence or used for any purpose without the production of the other copies.

23.13 CONSTRUCTION AND GRAMMATICAL USAGE This Lease shall be governed, construed and interpreted in accordance with the laws of The Commonwealth of Massachusetts, and Tenant agrees to submit to the personal jurisdiction of any court (federal or state) in said Commonwealth for any dispute, claim or proceeding arising out of or relating to this Lease. In construing this Lease, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so admits or requires. If there be more than one party tenant, the covenants of Tenant shall be the joint and several obligations of each such party and, if Tenant is a partnership, the covenants of Tenant shall be the joint and several obligations of each of the partners and the obligations of the firm.

Each of the parties acknowledges that it has been advised by counsel, or had the opportunity to be advised by counsel, in the drafting, negotiation, execution and delivery of this Agreement, and has actively participated in the drafting, negotiation, execution and delivery of this Agreement. In no event will any provision of this Agreement be construed for or against either party as a result of such party having drafted all or any portion hereof.

23.14 WHEN LEASE BECOMES BINDING Employees or agents of Landlord have no authority to make or agree to make a lease or any other agreement or undertaking in connection herewith. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises, and this document shall become effective and binding only upon the execution and delivery hereof by both Landlord and Tenant.

23.15 SECURITY DEPOSIT ~~If, in Section 1.2 hereof, a security deposit is specified, Tenant agrees that the same will be paid upon execution and delivery of this Lease, and that Landlord shall~~

~~hold the same, throughout the term of this Lease, as security for the performance by Tenant of all obligations on the part of Tenant to be kept and performed. In no event shall said security deposit be deemed to be a prepayment of rent nor shall it be considered a measure of liquidated damages. Landlord shall have the right from time to time without prejudice to any to cure a default by Tenant hereunder or Landlord's damages arising from any default on the part of Tenant. If any amount of such deposit is so applied, Tenant shall pay the amount so applied to Landlord upon demand therefor. Tenant not then being in default, Landlord shall return the deposit, or so much thereof as shall not have theretofore been applied in accordance with the terms of this Section 23.15 to Tenant on the expiration or earlier termination of the Lease Term and surrender of possession of the Premises by Tenant to Landlord. While Landlord holds such deposit, Landlord shall have no obligation to pay interest on the same and shall have the right to commingle the same with Landlord's other funds. If Landlord conveys Landlord's interest under this Lease, the deposit or any part thereof not previously applied may be turned over by Landlord to Landlord's grantee, and if so turned over, Tenant agrees to look solely to such grantee for proper application of the deposit in accordance with the terms of this Section 23.15 and the return thereof in accordance herewith.~~

~~Neither a successor landlord nor the holder of a mortgage which includes the Premises shall ever be responsible to Tenant for the return or application of any such deposit, whether or not it succeeds to the position of Landlord hereunder, unless such deposit shall have been received in hand by such successor or holder.~~

**23.16 ENFORCEMENT EXPENSES** Each party shall bear their own costs fees and expenses (including, without limitation, attorneys' fees and costs) incurred arising out of or resulting from any act or omission by either party with respect to this Lease or the Premises, including without limitation, any breach by either party of its obligations hereunder, irrespective of whether party resorts to litigation as a result thereof.

**23.17 NO SURRENDER** The delivery of keys to any employee of Landlord or to Landlord's agents or employees shall not operate as a termination of this Lease or a surrender of the Premises.

**23.18 COVENANT OF QUIET ENJOYMENT** Subject to the terms and provisions of this Lease and on payment of the Rent, additional rent, and other sums due hereunder and compliance with all of the terms and provisions of this Lease, Tenant shall lawfully, peaceably and quietly have, hold, occupy, and enjoy the Premises during the term hereof, without hindrance or ejection by Landlord or by any persons claiming under Landlord, subject to the emergency exceptions provided for previously in this Agreement; the foregoing covenant of quiet enjoyment is in lieu of any other covenant, express or implied.

**23.19 NO PERSONAL LIABILITY**

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(a) The Tenant agrees to look solely to Landlord's then equity interest in the Premises at the time owned, or in which Landlord holds an interest as ground lessee, for recovery of any judgment from Landlord; it being specifically agreed that neither Landlord (whether Landlord be an individual, partnership, firm, corporation, trustee, or other fiduciary) nor any partner, policyholder, officer, manager, member, shareholder or director of Landlord, nor any trust of which any person holding Landlord's interest is trustee nor any successor in interest to any of the foregoing shall ever be personally liable for any such judgment, or for the payment of any monetary obligation to Tenant. The covenants of Landlord contained in this Lease shall be binding upon Landlord and Landlord's successors only with respect to breaches occurring during Landlord's and Landlord's successors' respective periods of ownership of Landlord's interest hereunder.

(b) The Landlord agrees, without limitation, to look solely to the assets of Tenant for the recovery of any judgment of Landlord from the Tenant, it being agreed that no Trustee shall ever be personally liable for any such judgment or for the payment to Landlord of any monetary obligation of the Tenant.

23.20 LIMITATION. Nothing herein shall abrogate the application of Massachusetts General Laws Chapter 258, as the same may be amended from time to time.

23.21 REASONABLENESS. Throughout this Agreement, whenever either Tenant or Landlord is given the right to seek recovery of costs, expenses or attorney's fees, recovery of such costs, expenses and attorney's fees shall be limited to those which are reasonable in nature.

23.22 NOTICES Any and all notices, or other communications required or permitted under this Agreement shall be in writing and delivered by hand or mailed, postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at the following addresses or at such other addresses as the parties shall designate from time to time by written notice:

Landlord: Vincent Pusateri  
City Solicitor  
Fitchburg City Hall  
166 Boulder Drive  
Fitchburg, MA 01420

With a copy to: A.J. Tourigny  
Mayor's Chief of Staff  
166 Boulder Drive  
Fitchburg, MA 01420

Tenant: Fitchburg Aircraft Condominium Trust  
PO Box 698, Boylston, MA 01505-0698

**ARTICLE XXIV FORCE MAJEURE**

24.1 Neither party shall be liable to the other or deemed to be in breach under this Lease for any failure to perform, including, without limitation, a delay in rendering performance due to causes beyond its reasonable control such as an order, injunction, judgment, or determination of any Court of the United States or the Commonwealth of Massachusetts, an Act of God, war, civil disobedience, extraordinary weather conditions, labor disputes, or shortages, or fluctuation in electric power, heat, light, or air conditioning. Dates or time of performance will be extended automatically to the extent of such delays, provided that the party whose performance is affected promptly notifies the other of the existence and nature of such delay.

24.2 It is agreed, however, that since the rights and obligations set forth in this Lease are important, continued failure to perform for periods aggregating ninety (90) days or more, even for causes beyond the control of party failing to perform, shall be deemed to render performance impossible and the other party shall thereafter have the right to terminate this Lease in accordance with the provisions set forth herein.

24.3 If the Tenant is the terminating party under this provision, it shall give Landlord thirty (30) days advanced notice of its intention to terminate by certified mail and shall remove its personal property and such improvements as the Landlord determines it does not wish to retain, within said thirty (30) days of notice to do so. Tenant shall be removed from all liability for future rent, upon vacating the Premises on the date specified in such notice and paying all Rent and any other monies due, and shall remove its personal property and such improvements as the Landlord determines it does not wish to retain, within thirty (30) days of notice to do so.

24.4 If the Landlord is the terminating party under this provision, it shall give the Tenant as much advance notice, in writing, as practicable under the circumstances. The Landlord's termination of this Lease in accordance with this Section shall preclude the Tenant's recovery of damages against the Landlord or the City of Fitchburg or their respective officers, attorneys, employees or agents, relating to or arising from said termination or the underlying Force Majeure circumstance or event, including but not limited to any and all costs of relocation, lost profits, lost opportunity, or any other direct, indirect, consequential, incidental loss. In the event of damages hereunder the parties shall attempt, in good faith, to negotiate a resolution of the damages issue.

**ARTICLE XXV TERMINATION FOR CONVENIENCE**

25.1 TERMINATION FOR CONVENIENCE. Notwithstanding any other provision of this Lease, the Landlord reserves the right at any time in its absolute discretion to suspend or terminate this Lease in whole or in part for its convenience upon written notice to the Landlord. If any

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portion of this Lease so suspended is not recommenced by written notice of the Landlord within the time period specified in the written notice of suspension, the suspended portion of this Lease shall thereupon be deemed terminated as to that portion for the convenience of the Landlord in accordance with this provision. Neither the Landlord nor the City of Fitchburg shall incur liability by reason of such termination for convenience. The Tenant shall have no right to recover damages against the Landlord or the City of Fitchburg or their respective officers, attorneys, employees or agents, relating to or arising from said termination or suspension under this provision, including but not limited to any and all costs of relocation, lost profits, lost opportunity, or any other direct, indirect, consequential, or incidental loss. The City expressly agrees that it shall not exercise its right as set forth in this section to terminate for its convenience for twenty (20) years from the date of this Lease. Thereafter, if the City exercises its rights under this section, the City shall pay to the then unit owners either their original purchase price plus one and three quarters (1.75 %) percent per year for each year, or part thereof, said owner held the unit, or the fair market value at the time of such termination, whichever is less, taking into account the maximum remaining term of this Lease, including any Extension Term, at the time of such termination.

**ARTICLE XXVI EXECUTION**

26.1 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same Agreement. This Agreement is subject to City Council approval or authorization of the City's Mayor to execute the same.

IN WITNESS WHEREOF, the City of Fitchburg, has caused its corporate seal to be affixed hereto and these presents to be signed in its name on its behalf by its Mayor, Stephen L. DiNatale, by Jack Naylor, the Chairperson of the Fitchburg Airport Commission, thereto duly authorized, by the Fitchburg Airport Manager, and the Trustees of the Fitchburg Aircraft Condominium Trust under their hands and seals as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

TENANT:

FITCHBURG AIRCRAFT CONDOMINIUM TRUST

By: \_\_\_\_\_  
Eric B. Sheffels, Trustee

By: \_\_\_\_\_  
David Murphy, Trustee

By: \_\_\_\_\_  
Curtis Hoffman, Trustee

LANDLORD:

Fitchburg Airport Commission

\_\_\_\_\_  
Jack Naylor, Chairperson

\_\_\_\_\_  
Scott Ellis, Fitchburg Airport Manager  
\_\_\_\_\_



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EXHIBIT A: PLAN SHOWING THE PREMISES

EXHIBIT B: TERM COMMENCEMENT DATE AGREEMENT

EXHIBIT C: SCHEDULE OF TENANT HAZARDOUS WASTE

EXHIBIT D: RECITALS AND SPECIFIC PROVISIONS

EXHIBIT E: REMAINING LIEBFRIED UNITS

EXHIBIT A  
(To Be Inserted)

Orders-Finance

EXHIBIT B  
TERM COMMENCEMENT DATE AGREEMENT

The parties hereto agree that the Effective Date of this Amended and Restated Ground Lease is January 1, 2018, and that as of the execution hereof the provisions regarding payment of Rent and Additional Rent shall apply as of January 1, 2018, and that all amounts paid prior to this date shall be accepted as all Rent due prior to January 1, 2018, except for the amount due of \$\_\_\_\_\_ which shall be paid in full upon the date of the execution of this Amended and Restated Ground Lease.

*City of Fitchburg,* May 1, 2018

Orders-Finance

**EXHIBIT C  
SCHEDULE OF HAZARDOUS WASTE**

Tenant hereby states and avers that the following is a full and complete list of the items of Hazardous Waste now kept or intended to be kept upon the Premises:

None, other than those items as are customarily used in connection with the customary maintenance, use and operation of private aircraft.

## EXHIBIT D

RECITALS AND SPECIFIC  
PROVISIONS

I. RECITALS OF INTENTION. The following recitals of the intentions of the parties shall apply to the entirety of the preceding Lease Agreement.

WHEREAS, the Landlord operates the Fitchburg Municipal Airport for the City of Fitchburg, Massachusetts;

WHEREAS, Landlord leased certain land in its custody and control to Andrew Leibfried as Trustee of Liebfried Realty Trust ("Leibfried") pursuant to a certain Lease dated June 25, 2003 recorded with the Registry in Book 4984, Page 280 (the "Original Lease");

WHEREAS, the Tenant is the successor to Leibfried's interest as lessee pursuant to the Original Lease by virtue of a certain "Sublease Agreement Fitchburg Aircraft Condominium" by Liebfried dated April 12, 2004 recorded with said Deeds in Book 5213, Page 145 (the "Sublease") and a certain unrecorded Assignment of Lease from Liebfried to the Tenant dated April 12, 2004 (the "Assignment") as confirmed by instrument dated October 13, 2011 recorded with the Registry in Book 7515, Page 1 (the "Confirmatory Assignment");

WHEREAS, the Landlord hereby acknowledges that it has consented to the assignment of the Original Lease to the Tenant;

WHEREAS, the Tenant is the current Unit Owner's Organization for the owners of units (the "Unit Owners") in the Fitchburg Airport Condominium Trust created by Master Deed dated April 12, 2004, recorded with said Deeds in Book 5213, Page 123, as amended by instruments of record;

WHEREAS, the Tenant represents to the Landlord that it has the authority to enter into this Amended and Restated Lease Agreement on behalf of the said Fitchburg Aircraft Condominium Trust and the Unit Owners thereunder;

WHEREAS, the Landlord and the Tenant acknowledge and agree that the premises leased pursuant to the Original Lease and leased hereunder consists of 212,298 square feet of land as more particularly described in Exhibit A attached hereto and incorporated herein (hereinafter the "Premises");

WHEREAS, the Landlord and the Tenant acknowledge and agree that the Landlord

acknowledges and agrees that this Amended and Restated Ground Lease has been entered into to permanently resolve disputes which have been ongoing between the Parties regarding the Original Lease and certain encroachments thereon, and that by executing this Lease both parties waive any and all claims they may have against the other for any and all causes of action which may have accrued up to the date of the execution of this Restated Lease, and no party hereto has any claim under the Original Lease to any other party hereto.

WHEREAS, Leibfried has previously constructed building(s) and other improvements as appurtenant and necessary for the permitted uses set forth in the Lease Agreement which, upon their completion and the Liebfried's compliance with the other terms and conditions set forth herein, Liebfried has conveyed, transferred or assigned its interest to the Tenant and/or the Unit Owners as permitted under the terms of the Original Lease and this Lease Agreement;

WHEREAS, the Tenant is the Organization of Unit Owners for the owners of the aircraft storage units (defined for the purposes of this Lease Agreement, as an enclosed designated space appropriate for the storage of a single aircraft) of the Fitchburg Aircraft Condominium is formally organized with officers, bylaws and rules and regulations so as to form a single legal entity with which the Landlord may contract and that shall be responsible to satisfy the duties and obligations set forth herein;

WHEREAS, this Lease Agreement is subject to the approval of the Mayor and the City Council of the City of Fitchburg and by the owners of the Units of the Fitchburg Aircraft Condominium;

NOW THEREFORE, the parties state that in consideration of the covenants contained in the Lease Agreement and the intentions and interests recited above, the Landlord does hereby lease, demise and let unto the Tenant the use and occupancy of the Premises.

I. RESERVATION OF RIGHTS REGARDING LIEBFRIED. Notwithstanding the above approval for assignment or any provision in this Lease to the contrary, the Landlord hereby shall not release but instead affirmatively reserves its rights, for itself and for the City of Fitchburg, as against Liebfried and any and all successors and/or assigns (the "Liebfried Parties") for any damages, liability or loss resulting directly or indirectly from any action or inaction, negligence or willful conduct by Liebfried, its officers, agents, employees, tenants, subtenants, contractors, subcontractors, or invitees relating in any way to this Lease or the Premises. Neither the Trustees of the Fitchburg Aircraft Condominium Trust nor the owners of Units of the Fitchburg Aircraft Condominium and their successors and assigns shall be considered to be Liebfried Parties for the purposes of this Section I and shall have no responsibility for or obligation with respect to actions or inactions of the Liebfried Parties .



Orders-Finance

II. SALE OR TRANSFER OF AIRCRAFT. Nothing in the foregoing Lease shall be construed to require Tenant to obtain Landlord's prior consent in order to sell or transfer aircraft or aircraft parts, so long as such sales are not in the ordinary and regular course of the Tenant's or individual unit owner's business.

III. ANNUAL REPORT. Annually on June 1 of each year, the Tenant shall submit to the Landlord, in writing, an Annual Report. The Annual Report shall contain a detailed record of (1) any and all improvements on the Premises, including but not limited to a description of said improvement, its cost, the amount unpaid and owed, the names and addresses of the payee(s) and payor(s), (2) any and all claims, including the names and address of the claimant(s), made against the Tenant, including but not limited to those alleging negligence, property damage, personal injury, (3) the name and address of the owner of each aircraft storage unit, and the unit number or similar designation so owned, (4) a balance sheet setting forth the assets and liabilities of the Tenant, and (5) a report regarding the Hangar Maintenance Fund.

IV. HANGER MAINTENANCE FUND. As of the date hereof, Tenant holds Fifteen Thousand Dollars (\$15,000.00) in a "Hangar Maintenance Fund", as a fiduciary, in an interest-bearing account or such other investment as the Parties may agree, the principal and income of which shall be used for ongoing maintenance, repair and replacement and for capital improvements voted by the Unit Owners of the Tenant and approved by the Landlord in accordance with Article VI of this Lease.

A. On January 1, 2023 and on the same day of each fifth year thereafter, the Tenant shall deposit an additional Five Thousand Dollars (\$5,000.00) in the Hangar Maintenance Fund. Each year, in its Annual Report, as set forth in Section IV of this Addendum D, the Tenant shall submit a written report to the Landlord stating what amount was paid by the Tenant to the Fund, the location of the money, the manner in which it has been invested, and the total balance of the Fund. At the termination of this Lease, whether at the expiration of the Initial or Extended Term or pursuant to any other termination provision set forth herein, said Funds shall be turned over to the Fitchburg Airport Commission.

B. In the event that funds are withdrawn from the Hangar Maintenance Fund are used for ongoing maintenance, repair and replacement and for capital improvements as provided above, the Hangar Maintenance Fund shall be replenished in an amount equal to the amount withdrawn by the Condominium Trust within twelve months after the withdrawal of the same.

EXHIBIT E

LIEBFRIED UNITS

Units 43, 53, A, C, D & E of the Fitchburg Aircraft Condominium

Bk 4984 Pg 311 #38740

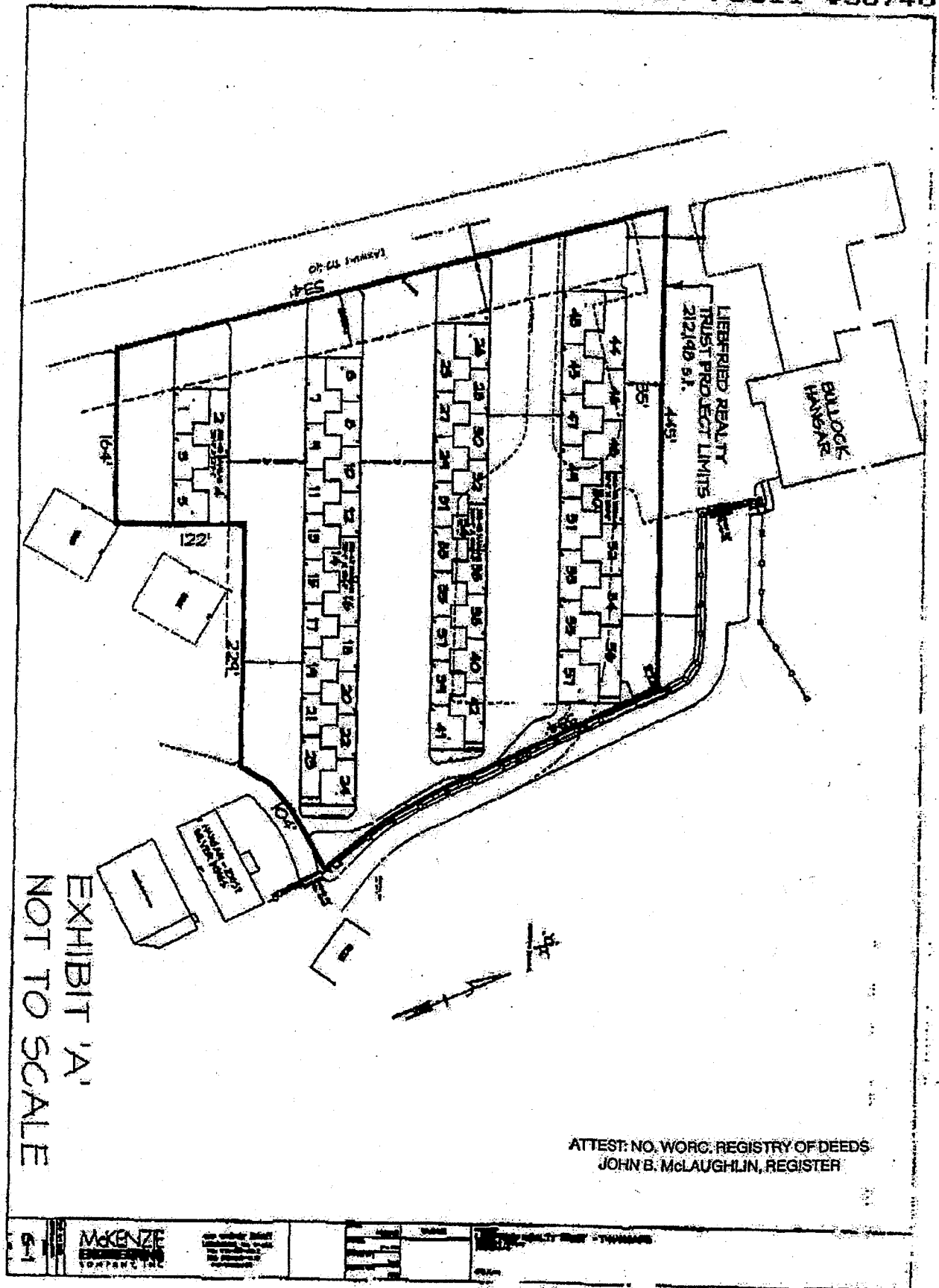


EXHIBIT 'A'  
NOT TO SCALE

ATTEST: NO. WORC. REGISTRY OF DEEDS  
JOHN B. McLAUGHLIN, REGISTER

SEP-24-2003 16:39 FROM AUERY ASSOCIATES TO 9784869434 P.03/03

116-18. ORDERED THAT: There be and hereby is appropriated the sum of ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00) same to be charged against AVAILABLE FUNDS and credited to the following DEPARTMENT OF PUBLIC WORKS, SNOW & ICE accounts:

PERSONAL SERVICES, OVERTIME	\$30,000.00
EQUIPMENT RENTAL	\$90,000.00

Order was adopted under Suspension of the rules by unanimous vote. 11 members present. Board consists of 11 members. Order signed by the Mayor May 2, 2018.

The following Orders were referred to the Finance Committee:

117-18. ORDERED THAT: There be and hereby is appropriated the sum of SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$75,000.00) same to be charged against AVAILABLE FUNDS and credited to VETERANS' BENEFITS, CASH BENEFITS account.

118-18. ORDERED THAT: There be and hereby is appropriated the sum of ONE HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$175,000.00) same to be charged against AVAILABLE FUNDS and credited to BOARD OF HEALTH SANITARY LANDFILL EXPENSES, CONTRACTED SERVICES for the cost of recycling material now being invoiced to the City.

119-18. ORDERED THAT: There be and hereby is appropriated the sum of FOUR THOUSAND, THREE HUNDRED TWENTY AND 00/100 DOLLARS (\$4,320.00) same to be charged against AVAILABLE FUNDS and credited to COMMUNITY DEVELOPMENT, DEP COMPLIANCE for the purpose of DEP compliance at city owned property at 465 Westminster Street, formerly the site of the Central Steam Plant.

120-18. ORDERED THAT: There be and hereby is appropriated the sum of TWENTY-SIX THOUSAND, SEVEN DOLLARS (\$26,007.00) same to be charged against AVAILABLE FUNDS and credited to accounts as enclosed in the Order.

City of Fitchburg

FITCHBURG CITY CLERK

2018 APR 26 AM 10:41

In City Council,

ORDERED: That

there be and hereby is appropriated the sum of TWENTY-SIX THOUSAND, SEVEN DOLLARS (\$26,007.00), same to be charged against AVAILABLE FUNDS and credited to accounts as follows:

ASSESSOR - Personal Services	\$2,236.00
TREASURER - Personal Services	5,200.00
CITY CLERK - Personal Services	1,976.00
BUILDING - Personal Services	1,768.00
POLICE - Personal Services	3,328.00
FIRE - Personal Services	2,496.00
DPW - Personal Services	1,040.00
HEALTH - Personal Services	3,588.00
COUNCIL ON AGING - Personal Services	1,616.00
VETERANS - Personal Services	936.00
MAYOR - Personal Services	1,040.00
EMPLOYEE BENEFITS - Other Benefits	783.00

Orders-Finance



*The City of Fitchburg*  
*Massachusetts*  
OFFICE OF THE MAYOR

**STEPHEN L. DINATALE****MAYOR**

166 BOULDER DRIVE  
FITCHBURG, MA 01420  
TEL. (978) 829-1801

**AARON TOURIGNY**

CHIEF OF STAFF

ATOURIGNY@FITCHBURGMA.GOV

**JOAN DAVID**

ADMINISTRATIVE AIDE

JDAVID@FITCHBURGMA.GOV

April 25, 2018

Calvin D. Brooks  
City Auditor  
166 Boulder Drive  
Fitchburg, MA 01420

Dear Mr. Brooks:

Kindly draw a council order for the City of Fitchburg to appropriate the sum of \$26,007.00 from Available Funds and credited to the following departments:

• Assessor, Personal Services	\$2,236.00
• Treasurer, Personal Services	5,200.00
• City Clerk, Personal Services	1,976.00
• Building, Personal Services	1,768.00
• Police, Personal Services	3,328.00
• Fire, Personal Services	2,496.00
• DPW, Personal Services	1,040.00
• Health, Personal Services	3,588.00
• Council on Aging, Personal Services	1,616.00
• Veterans, Personal Services	936.00
• Mayor, Personal Services	1,040.00
• Employee Benefits, Other Benefits	783.00

Kindly draw a second council order for the City of Fitchburg to transfer from within the following Personal Services accounts:

• Water Enterprise Fund	\$ 884.00
-------------------------	-----------

The purpose of these orders are to fund a new three year contract with Local 2034, AFSCME, which covers the period July 1, 2017 to June 30, 2020.

Thank you.

Regards,

Stephen L. DiNatale, Mayor

City of  
Fitchburg



Department of  
Human Resources

April 25, 2018

Honorable Mayor Stephen D. DiNatale  
Municipal Offices  
166 Boulder Drive, Ste. 108  
Fitchburg, MA 01420

Dear Mayor DiNatale:

Kindly be advised that negotiations with the American Federation of State, County and Municipal Employees (AFSCME), Council 93, Local #2034, representing the Clerical employees have concluded.

I have attached the signed Memorandum of Agreement and all related documents pertaining to this CBA.

As a result of these successful negotiations, I am requesting an appropriation from available funds in the amount of twenty-six thousand eight-hundred and ninety-one dollars (\$26,891). This amount represents the first year of the Collective Bargaining Agreement and associated retroactive wages.

Please contact me should you have any questions related to this matter.

Susan A. Davis  
Director of Human Resources

Cc: Calvin Brooks, City Auditor  
Enc: Memorandum of Agreement  
Vacation Matrix  
Wage Matrix  
Education/Training Conditional Waiver  
City of Fitchburg Telephone Usage Policy  
Modified/Light Duty Policy

**City Hall Offices**  
166 Boulder Drive, Ste. 108  
Fitchburg, MA 01420  
P. 978.829.1800

[www.fitchburgma.gov](http://www.fitchburgma.gov)

Monday – Friday  
8:30 AM – 4:30 PM

**Susan A. Davis**  
Director

P. 978.829.1809  
F. 978.829.1966

[sdavis@fitchburgma.gov](mailto:sdavis@fitchburgma.gov)

**Steffani J. Santiago**  
HR Assistant II

P. 978.829.1808  
F. 978.829.1966

[ssantiago@fitchburgma.gov](mailto:ssantiago@fitchburgma.gov)

**FITCHBURG**  
*Massachusetts*





**MEMORANDUM OF AGREEMENT**

Between the  
**CITY OF FITCHBURG, MA**

And the

**AMERICAN FEDERATION of STATE, COUNTY and MUNICIPAL EMPLOYEES (AFSCME)**

**AFL - CIO**

**COUNCIL 93/LOCAL 2034**

**March 26, 2018**



The City of Fitchburg (the "City") and the American Federation of State, County and Municipal Employees (AFSCME), AFL – CIO, Council 93, Local 2034, ("Union"), collectively referred to as the "Parties," have concluded negotiations over changes to the terms for the successor Collective Bargaining Agreement between the Parties covering the period of fiscal years July 1, 2017 through June 30, 2020 and agree to extend their 2015 – 2017 Collective Bargaining Agreement ("CBA") from July 1, 2017 through June 30, 2020, in all respects, except as modified by this Memorandum of Agreement. All changes shall become effective as of the date specified or effective as of the date of this Agreement should no date be specified. The Parties agree to the following modifications:

**1. Collective Bargaining Agreement Document**

The current CBA document shall be reformatted, replacing Roman numerals with Arabic numbers and all grammatical errors shall be corrected. A preliminary revised document shall be submitted to the Union for review and approval prior to signing.

**2. Article 5, CIVIL SERVICE, p. 3**

The Parties have agreed to the following:

**1. Eliminate** Civil Service from the hiring process and all matters related to employment for all new employees, effective with the date of the signing of this Agreement. Those employees currently within their probationary period shall be included with new employees.

**2. Current** employees covered under this Agreement shall retain his/her Civil Service status and all rights accruing to them thereunder which are now in effect or may come into effect by subsequent amendment, in accordance with M.G.L, C. 31, other Civil Service laws, rules or regulations.

**3. Written** notification of same shall be sent to the Agency and to the Union President.

**3. Article 8, VACATION, p. 5**

**a. *Eliminate*** all paragraphs in current CBA related to vacation accrual and usage.

**b. *Replace*** with new vacation and accrual matrix which appears as an Appendix to this Memorandum of Agreement.

**4. Article 9, SICK LEAVE, p. 6**

**1. Subsection 2 (c):**

**a. *Eliminate*** subsection 2(c): If an employee reports to work at the regular hours and must leave early due to illness, such employee will be paid for the day and will not be charged a sick day if s/he works at least four (4) hours. If an employee leaves work more than three (3) times in a twelve (12) month period, all sick time will be charged against the employee on an hourly basis.

**b. *Replace*** with: If an employee needs to leave work early due to illness, such employee shall earn the equivalent of compensatory time for hours actually worked on that day. Said employee will be charged for one (1) sick day if s/he leaves before 2:00 PM. If said employee leaves after 2:00 PM, s/he will be charged for a ½ sick day. If an employee leaves work more than three (3) times in a twelve (12) month period, all sick time will be charged against the employee on an hourly basis.

**MOA, CITY OF FITCHBURG, MA & AFSCME, COUNCIL 93, LOCAL 2034, ARTICLE 9, SICK LEAVE, continued:****2. Section 3, SICK LEAVE PERSONAL DAYS, p. 7****a. Add the following to section:**

- Employees hired on or after January 1, 2018 shall carryover no more than six (6) personal days into the next calendar year.
- b. All current employees shall retain their current levels of carryover, as stipulated in the current CBA.

**3. Section 5, SICK LEAVE BANK, p. 7**

**a. Eliminate** "An eligible employee donating eight (8) or more days in a year shall be eligible for two (2) additional "bonus" personal days for use in the twelve (12) months following such donation."

**b. Replace** with "An eligible employee donating eight (8) days in a year shall be eligible for two (2) additional "bonus" personal days for use in the twelve (12) months following such donation."

**c.** The Sick Bank eligibility period shall change from twenty-four (24) months to eighteen (18) months, provided all other eligibility requirements are met.

**5. Article 12, WORKER'S COMPENSATION, p. 9**

**a. Eliminate:** "Any employee when disabled by an accident or injury arising out of his employment is entitled to file for benefits under Worker's Compensation. Any injury must be reported forthwith to the supervisor. The report of injury shall be completed in triplicate, one copy shall be retained in the employee's personnel file and two (2) copies forwarded to the Workers' Compensation Agent for the City of Fitchburg as soon as possible. So long as physician and needed investigation reports are filed, the City will process claims as expeditiously as possible. The City will pay the difference between Workers' Compensation and the employee's weekly pay. This shall be deducted from the employee's sick leave, provided the employee has sufficient accrued sick leave to convert."

**b. Replace** with: "The City agrees to fully cooperate and comply with all local, state and federal Worker's Compensation laws. At the option of the employee, the City will calculate, process and include the difference between the Worker's Compensation amount and the employee's regular base weekly pay in accordance with the City's bi-weekly payroll processes and policies. The equivalent amount of time shall be deducted from the employee's accrued vacation, personal or sick time. If the employee chooses to use sick time to offset the Worker's Compensation amount, s/he will not accrue personal time.

**c.** Effective July 1, 2018, Worker's Compensation shall run concurrently with FMLA (Family Medical Leave Act) leaves.

**d.** Effective July 1, 2018, a Modified/Light Duty policy shall be put into place. (See attached)

**6. Article 13, MILITARY LEAVE, p. 9**

**a. Eliminate:** "A military leave of absence without compensation shall be granted to any permanent employee called to active duty with the Armed Forces of the United States. A permanent employee who is a member of a reserve component of the Armed Forces of the United States shall be granted a leave of absence without loss of pay during his/her annual tour of duty not exceeding seventeen days.

2. A permanent employee who is a member of the Armed Forces of the Commonwealth of Massachusetts and who is called to duty by the Governor for the purpose of repelling an invasion, suppressing an insurrection or Civil disorder, or maintaining order in the case of a public disaster or emergency, shall be granted a leave of absence without loss of pay during the period of such service. He shall also be granted a leave of absence without loss of pay during his/her annual tour of duty not exceeding seventeen (17) days with the Armed Services of the Commonwealth of Massachusetts.

3. A permanent employee will not lose his/her seniority if he/she is called to active duty for an extended period of time provided that he/she returns to his/her job within one month of his/her honorable discharge or release from active duty and files with Municipal Employer the certificate of a registered physician that he/she is not physically disabled or incapacitated for his/her position in the municipal service."

**b. Replace** with: The City will comply with all local, state and federal laws related to Military Leave.

**MOA, CITY OF FITCHBURG, MA & AFSCME, COUNCIL 93, LOCAL 2034, continued:****7. Article 17, SAFETY COMMITTEE, p. 11**

The Parties agree to resume the activities of the established Safety Committee as follows:

a. The Safety Committee shall be composed of three (3) employees covered under this Agreement, two (2) supervisory personnel and the Chairman of the Public Safety Committee of the Fitchburg City Council, who shall serve as an ex-officio member.

b. The Committee shall elect its own chairperson and shall meet on a quarterly basis to review safety practices. The committee shall make recommendations relative to conditions, which in its opinion, are potential violations or are violations of applicable safety and health codes and regulations, provided by the City, which may require correction. Said committee shall be responsible to create a safety code policy for each unit's work area.

c. Contact information for all committee members shall be made available to Union members for each area in order to inform the appropriate committee member of any possible safety concerns.

d. The Municipal Employer agrees that it will use due diligence to avoid hazardous conditions and make every effort to eliminate any condition which might result in injury or illness to employees.

e. The actions and activities of the Safety Committee will adhere to the guidelines and requirements set forth by Massachusetts Interlocal Insurance Association (MIIA).

**8. Article 18, HEALTH AND WELFARE, p. 12****a. Eliminate:**

The Municipal Employer shall provide health insurance benefits to employees pursuant to the terms of the agreement negotiated by the City and the Public Employee Committee (PEC.) pursuant to M.G.L. c. 32B, sec. 19.

a. \$10,000.00 in Life Insurance.

b. Hospitalization insurance, Blue-Cross/Blue-Shield, HMO Blue, Blue Choice or other similar insurance plan.

Effective January 1, 1984, the Employer agrees to establish full Insurance Committee pursuant to Mass. General Laws Chapter 32B, Section 3.

**b. Replace with the following:**

Pursuant to M.G.L. 32B, §19 and the terms of the Agreement negotiated between the City and the Public Employee Committee (PEC), the City shall provide employees with the following:

- Medical Insurance, either Blue Cross/Blue Shield, with options of Blue Care Elect, Blue Choice, HMO Blue or other similar insurance plan; Premiums costs shall be paid by the City at either seventy percent (70%) or seventy-five percent (75%) and thirty percent (30%) or twenty-five percent (25%) to be paid by the employee, dependent upon which plan the employee selects.

- Life Insurance in the amount of fifteen thousand dollars (\$15,000), premium costs of which shall be paid at seventy-five percent (75%) paid by the City and twenty-five percent (25%) paid by the employee. The employee has the option of purchasing additional life insurance and shall pay one hundred percent (100%) of all premium costs.

**9. Article 30, VACANCIES, p. 17****a. Eliminate the following:**

"Management reserves the right to hire a new clerical employee at a step not greater than step two. If a person is hired at step two, all clerical employees at step one will be upgraded to step two retroactive to the date that the person was hired at step two. Prior notice will be given to the Union President if a new employee is hired at a greater step than Step

**MOA, CITY OF FITCHBURG, MA & AFSCME, COUNCIL 93, LOCAL 2034, Article 30, Vacancies, continued:**

Two (2). Notice of posting will be given to the Union President and/or designee prior to the posting. No internal applications will be taken after the posted date on the posting."

**b. Replace with the following:**

"Management reserves the right to hire a new clerical employee at a step greater than Step Two (2). If such person is hired as aforementioned, the qualifications, experience and education of current employees shall be considered as a part of the hiring process and wage determination of said new hire. The new hire employee shall have a minimum of 2 years' relevant and/or related experience. Clerical members covered by this Agreement, currently in Steps below the rate of the newly hired employee shall be considered for a Step Increase equivalent to the same step as the new employee, provided that the current employee has the same and/or equivalent combination of experience, education and qualifications as the newly hired employee. Prior notice shall be given to the Union if a new employee is to be hired as aforementioned. The final decision related to compensation for new hires shall be at the discretion of the City."

**10. Article 31, BEREAVEMENT LEAVE, p. 17**

The Parties agree to the following changes:

**a. Eliminate** the following: "In the event of the death of an employee's niece, nephew, first cousin or the employee's spouse's grandparent, aunt, uncle, sister-in-law, brother-in-law, niece or nephew, the employee shall be granted a day off with pay to attend the funeral."

**b. Replace** with the following: "In the event of the death of an employee's niece, nephew, first cousin or the employee's spouse's grandparent, aunt, uncle, sister-in-law, brother-in-law, niece or nephew, the employee shall be granted up to three (3) days off with pay to attend the funeral."

**c. Add** "domestic partner" to article, in paragraph one, and sentence one, after the word "spouse."

**11. Article 32, MATERNITY LEAVE/FAMILY AND MEDICAL LEAVE, p. 18**

The Parties have agreed to the following:

1. Eliminate the current Article 32, Maternity Leave/Family and Medical Leave. Replace with the Parental/Adoptive Leave.
2. Create a separate article in the CBA for the Family Medical Leave Act (FMLA).

**a. Eliminate the following:**

1.1 Maternity leave shall be available to all female employees in accordance with M.G.L. c. 149, sec. 105D, for the birth of a child or adoption. An employee, upon application in writing and for personal medical reasons certified by the employee's attending physician/obstetrician, may be granted by the mayor a six (6) month extension of said maternity leave.

1.2 Up to twelve (12) weeks of leave will be granted to eligible employees for family and medical leave purposes in accordance with the Family and Medical Leave Act (FMLA) of 1993.

1.3 The twelve (12) month period for purposes of FMLA leave shall be a rolling twelve (12) month period beginning prospectively with the first day of FMLA leave. The twelve (12) week FMLA leave shall run concurrently with the eight (8) week maternity leave.

2.0 An employee covered by this contract that has a positive accrued Sick Days balance, may use up to five (5) Sick Days to care for a grandparent, grandchild spouse, child, or sick parent Up to five (5) vacation leave days may be reserved from exhaustion for use under FMLA. The aforementioned five (5) vacation days may only be used with written permission of the Mayor. Employees may not otherwise use sick days for FMLA leave.

**b. Replace with the following:**

**Article 32, PARENTAL LEAVE, p. 18**

**Section 32.1 Definition**

**MOA, CITY OF FITCHBURG, MA & AFSCME, COUNCIL 93, LOCAL 2034, Article 32, Maternity Leave, continued:**

The Parental Leave Act expands the current maternity leave law, pursuant to M.G.L. c. 149, §105D. This gender neutral law provides up to eight (8) weeks of unpaid leave for the purpose of giving birth or for the placement of a child under the age of eighteen (18) or age twenty-three (23) if the child is mentally or physically disabled, for adoption. Both men and women are entitled to Parental Leave, provided the following:

- Such Leave shall apply to employees, classified as full time and benefited only and who have completed at least three (3) months of her/his required probationary period.
- Such Leave shall be unpaid, unless the employee chooses to use accrued personal, sick or vacation leave.
- Said employee must provide a two (2) week notice of departure seeking such Parental Leave and the employee's intention to return or as soon as is practicable if a delay is due to reasons beyond the employee's control.
- Should two (2) employees of the City give birth to or adopt the same child, the two (2) employees are entitled to an aggregate of with (8) weeks' leave.
- Parental Leave shall run concurrently with the Family Medical Leave Act (FMLA).
- The City shall comply with all local, state and federal laws related to the Parental Leave Act.

**12. New Article #33, FAMILY MEDICAL LEAVE ACT (FMLA)**

The City agrees to fully cooperate and comply with all local, state and federal laws related to the Family Medical Leave Act.

**13. Article 34, WAGES AND LONGEVITY, p. 19****Section A: WAGES**

a. ***Eliminate*** language related to wage increases in current CBA.

b. ***Replace*** with the following:

- a. A **2%** wage increase shall become effective July 1, 2017.
- b. A **2%** wage increase shall become effective July 1, 2018.
- c. A **2%** wage increase shall become effective July 1, 2019.

Steps 1 and 2 shall be eliminated from the Wage Matrix and a new Step 12 and Step 13 shall be added. The steps have been renumbered in the Wage Matrix, eliminating Steps 1 and 2, so that the former Step 3 shall become the new Step 1, the former Step 4 shall become the new Step 2, etc. All employees' current steps shall be renumbered accordingly. Employees shall receive step increases as scheduled in the current wage matrix. The new wage matrix and new rates of all members shall appear as an Appendix to this MOA. Wages will be retroactive to July 1, 2017, unless specifically provided for.

c. **Item #2: *Eliminate*** 1<sup>st</sup> sentence, "Beginning July 1, 2015, all AFSCME Union members shall be required to enroll in a direct deposit paycheck system."

d. ***Replace*** with: "All AFSCME Union members are required to participate in direct deposit for payroll processing requirements.

e. **Item #3: *Eliminate*** "New employees or current employees who are promoted to a higher position in a higher pay grade on or after July 1, 2002, shall be eligible for consideration of a step increase on the 1<sup>st</sup> of July following successful completion of six (6) months in said position.

f. ***Replace*** with: "Newly hired employees or current employees who are promoted to a higher position in a higher wage classification shall be eligible for consideration of a Step Increase on the 1<sup>st</sup> of July provided the following:

- Said employee has been in such position for a minimum of the required six (6) month probationary period;

**MOA, CITY OF FITCHBURG, MA & AFSCME, COUNCIL 93, LOCAL 2034, WAGES and LONGEVITY, continued:**

- The employee has received a performance evaluation rating of "Acceptable" or better for his/her ninety (90) day Performance Review;
- The position is classified as and requires successful completion of one (1) year in said position, as indicated on the wage matrix "years in step" section.

**g. Item #4: *Eliminate*** "Thereafter, employees will be considered for step increases on an annual basis, effective on July 1<sup>st</sup>. Approval of step increase shall be based on appropriated funding."

**h. *Replace* with:** "Employees shall be eligible for consideration for a step increase on the 1<sup>st</sup> of July provided the following:

- Said employee has received a performance evaluation rating of "Acceptable" or better for his/her annual performance review for the preceding year;
- The employee has continuously and successfully completed the required amount of time in the position, as per the wage matrix (years in step" section.
- Appropriation of funds has been made to provide step increases.

**Section D: LONGEVITY, p. 21**

**a.** The Parties agree to the following related to longevity payments:

**1.** Employees hired on or after the effective date of this Agreement shall not be eligible to receive longevity payments.

**2.** Current employees shall continue to be paid longevity payments, as per the payment schedule established within the current CBA.

**3.** All other items in the existing article related to longevity shall remain as stated.

**14. Article 36, EDUCATIONAL BENEFITS, p. 23**

**a. *Eliminate*** the following: "The City agrees to pay for tuition, books, lab fees, internet courses and/or registration fees for job related courses taken by employees which are budgeted for and approved by the City in advance."

**b. *Replace with*** the following:

The City recognizes the importance of educational development and professional growth of its employees. As such, the City agrees to pay and/or reimburse employees for the cost of registration fees, tuition and books for educational courses and/or training. Payment and/or reimbursement for such training and/or courses must adhere to the following guidelines:

- All courses must be relevant to the employee's current position within the department and/or division.
- Employees must submit a written request to their department and/or division head prior to enrolling in any course and/or training. Approval must be obtained by said department and/or division head prior to the attendance at such training and/or educational course.
- Approval for training and attendance shall be granted by the department head based upon the needs of the department. The approval and selection for attendance at such training of one employee member over another shall be determined at the discretion of the department head.
- The employee must successfully complete the course and obtain a grade of a "B" (80 – 89) or higher. In the event of a pass/fail course, the employee must receive a "Pass" determination.
- Vehicle mileage or other automotive expenses to and from the location of the educational course shall not be included in said reimbursement.

Orders-Finance

**MOA, CITY OF FITCHBURG, MA & AFSCME, COUNCIL 93, LOCAL 2034, EDUCATIONAL BENEFITS, continued:**

- Subject to documentation provided by the employee and the recommendation of the Department Head and/or approval by and discretion of the Mayor, a higher education incentive shall be paid once per achievement for any educational degree earned by the employee during his/her employment with the City and deemed to be of value to the employee's job performance. An incentive shall not be paid for such educational degree obtained prior to the employee's hire date with the City of Fitchburg. Payments of such incentive shall not be subject to the grievance and arbitration process as detailed in this Agreement.
- Employees are required to sign an Employee Fee Agreement related to reimbursement of training costs regarding uncompleted training, unsatisfactory or non-passing grade, or separation from employer within two (2) years. Employees must sign such Agreement before approval shall be granted. This form appears as an Appendix to this MOA.
- The higher education incentives shall be paid as follows:

a. Associate Degree	Five Hundred Dollars (\$500)
b. Bachelor's Degree	Seven Hundred and Fifty Dollars (\$750)
d. Master's Degree	One thousand Dollars (\$1,000)
e. Doctoral Degree	One thousand Two Hundred Dollars (\$1,200)

**15. NEW ARTICLE 40, TELEPHONE USAGE POLICY/CELL PHONE POLICY**

The Parties agree to the creation and implementation of a written cell phone policy, with which all employees covered by this Agreement must comply. All current member employees, as well as future member employees, will be required to sign the acknowledgment and receipt of said policy, which appears as an Appendix to this MOA.

**\*APPENDICES:**

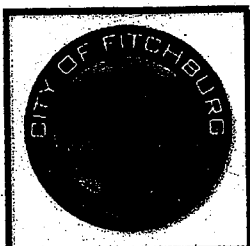
1. Vacation Matrix
2. Wage Matrix
3. Education/Training Conditional Waiver
4. City of Fitchburg Telephone Usage Policy
5. Modified/Light Duty Policy



City of Fitchburg,

May 1, 2018

Orders-Finance



This **Memorandum of Agreement** is subject to ratification by the Union membership and approval by the City of Fitchburg, MA, City Council. The ratified Agreement shall be subject to funding in accordance with M.G.L. c. 150E.

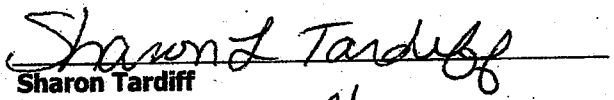
In witness whereof, the Parties hereto set their hands and seals on this 24<sup>th</sup> day of **April, 2018**.

**City of Fitchburg:**

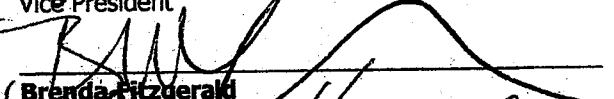
  
**Mayor Stephen L. DiNatale**

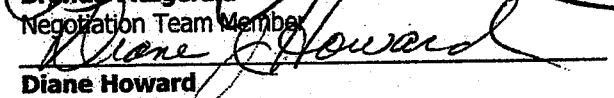
  
**Susan A. Davis**  
Director of Human Resources

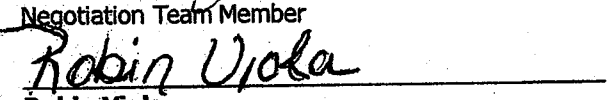
**American Federation of State, County and Municipal Employees  
(AFSCME/Council #93/Local 2034):**

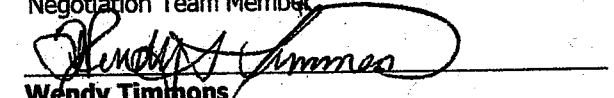
  
**Sharon Tardiff**  
President

  
**Janet Holstrom**  
Vice President

  
**Brenda Fitzgerald**  
Negotiation Team Member

  
**Diane Howard**  
Negotiation Team Member

  
**Robin Viola**  
Negotiation Team Member

  
**Wendy Timmons**  
Business Agent, AFSCME/Council #93/Local 2034



**ARTICLE 8  
VACATION**

1. When employees first become employed by the City of Fitchburg, they are eligible for vacation after 6 months of employment (or at the end of their probationary period, whichever is longer) on their anniversary date based on the month in which they were hired, as listed below. This includes the assumption that the employee will work through the end of the calendar year.

2. Employees become eligible for the next vacation increment level on the anniversary date of the current year if your hire date falls between January and June of that year. If your hire date falls between July and December, you will be eligible for the additional week on the January 1 of the following year in which your anniversary occurs.

Month of Hire	Non Exempt/Exempt
January	2 weeks in July
February	2 weeks in August
March	2 weeks in September
April	1 week in October
May	1 week in November
June	1 week in December
July	None - 2 weeks in January of following year
August	None - 2 weeks in February of following year
September	None - 2 weeks in March of following year
October	None - 2 weeks in April of following year
November	None - 2 weeks in May of following year
December	None - 2 weeks in June of following year

3. The maximum vacation for full time employees is as follows:

Completed Years of Service	Non Exempt (Hourly)/Exempt (Salary)
1 through 4	2 weeks
5 through 9	3 weeks
10 through 14	4 weeks
15 or more	5 weeks

4. All vacation usage shall require prior approval from and shall be granted at the discretion of the appropriate supervisor, according to the needs of the applicable department. Such vacation requests shall be made in writing. Vacation must be taken in the calendar year in which it is earned, however, an employee may carry forward one (1) week (5 work days) of vacation from a previous year, provided that the employee takes such vacation week together with no more than two (2) weeks (10 work days) of his/her vacation earned in the same calendar year at one time. Department Heads may, with the approval of the Mayor, allow such carried over week to be taken in some other manner if the needs of the Department permit.

5. An employee who has been employed with the City for five (5) or more consecutive years shall be allowed, in each calendar year, to exchange up to two (2) week's (10 days) of pay at his/her current base rate, for up to ten (10) accrued vacation days, provided the employee has three (3) weeks of vacation as of January 1<sup>st</sup> of the calendar year in which s/he wishes to exchange the aforementioned weeks. Employees employed for less than five (5) years shall be allowed, in each calendar year, to exchange up to one (1) week's pay (5 work days) for up to five (5) accrued vacation days.

6. All part time employees, who are regularly and continuously employed by the City and who work at least twenty (20) hours per week consistently, shall be eligible for paid vacation leave. Such leave shall be calculated on a prorated basis with full time employment.

7. This revised vacation matrix/schedule is effective with the execution of this Agreement and shall not be applied retroactively to any current employee's vacation leave, with the exception of those employees with a start date on or after July 1, 2017.

**AFSCME REV. 04.13.18**

[illegible]

Orders-Finance

**Appendix 36**

**AFSCME/Local 2034  
Employee Fee Agreement**

**Training and Educational Fees  
Conditional Waiver**

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Fitchburg, Massachusetts, acting by and through the appointing authority and Employee

For good and valuable consideration, the receipt and sufficiency which are hereby acknowledged, the City and the Employee as follows:

The City agrees to assume and be responsible for the payment of any and all fees related to departmentally approved classes required for obtaining licenses and/or certifications related to the Employee's position with the City, provided the Employee remains in the employ of the City of Fitchburg for a period of two (2) years.

Should said Employee request to voluntarily leave employment with the City of Fitchburg within two (2) years **after enrolling in and/or attending or completing said class and such payment or any portion thereof, has been made by the City**, s/he shall be responsible to reimburse the City the full sum of any and all fees related to said class. Said sum may be deducted from any severance monies or final pay due at the completion of City of Fitchburg employment. Should said severance monies or final pay be insufficient to cover the amount due in total, the Employee will individually be responsible for the remainder of the balance.

When unusual situations arise that leads to departure of the employee, the employee's Department Head and the Director of Human Resources reserve the right to have the final decision administering this agreement.

*Executed as a sealed instrument.*

**Employee**

\_\_\_\_\_  
PRINT First, Last Name

\_\_\_\_\_  
Employee Signature

**Witness**

\_\_\_\_\_  
PRINT First, Last Name

\_\_\_\_\_  
Witness Signature

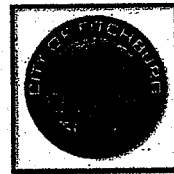
**Department Head**

\_\_\_\_\_  
PRINT First, Last Name

\_\_\_\_\_  
Department Head Signature



## CITY OF FITCHBURG TELEPHONE USAGE POLICY



The **Telephone Usage Policy** is created to provide consistent standards and policies related to the use of City owned land line telephone systems and cellular telephones utilized by the employees of the City of Fitchburg.

### A. Permissible Use

All City owned telephone systems and cellular phones should be used to conduct official City business only. As such, the use of such City owned property shall be subject to the policies set forth below. Land line telephone systems are acquired with public funds and are so acquired to enable City employees to transact the public's business in the most efficient and cost effective method possible. Cellular telephone numbers are the property of the City of Fitchburg and are not transferable, and shall be used in the same manner and with the same care and stewardship as all public resources.

All employees assigned a cell phone must adhere to and sign the "Acknowledgement of Receipt of Municipal Telephone Usage Policy" before being allocated a cellular phone.

### B. Personal Phone Calls

Whether using a City owned land line or cellular phone:

- Personal telephone calls should not interfere with the employee's duties and/or productivity, as well as that of co-workers;
- Phone calls of a personal nature should be limited in frequency and duration to the greatest extent possible during hours of employment, including both incoming and outgoing calls.

### C. Long Distance Phone Calls

Whether using a City owned land line or cellular phone:

- Long distance calls, including international calls, made for official City business, should be approved by a supervisor prior to making the call;
- Long distance calls of a personal nature, using a City owned phone, should be made under very limited circumstances. Such calls must be approved by a supervisor prior to making the call.

### D. Employee Responsibilities

This telephone usage policy applies to the safe and appropriate use of City owned land line telephone systems and cellular telephones owned by the City and/or the employee. All employees are required to adhere to this telephone usage policy as follows:

- Employees receiving cellular telephones are required to sign and acknowledge that they have received the equipment and understand the usage policies;
- All employees will follow the laws of the Commonwealth as it relates to the use of cellular devices while driving;
- The use of cellular telephones should never interfere with an employee's attention to duty, and should never be used when engaged in safety-sensitive functions which require the employee's full attention;
- Sending photo or text messaging is prohibited unless it can be clearly linked to the conduct of official City business;
- Confidential business should not be discussed on a cellular phone in a public place where the business could be overheard;

**City of Fitchburg/Telephone Usage Policy, Employee Responsibilities, continued:**

- Employees should limit the use of personally owned cellular telephones and telephone calls;
- Employees are responsible for charging/recharging the equipment;
- Service and maintenance issues, including the need for new batteries, must be reported to the employee's Department Head and/or designee;
- If any official City business is conducted on an employee's personal cell phone, reimbursement, as applicable and appropriate, shall be made to such employee after receipt of approval from the Department Head. Receipts and an expense report must be submitted in order for the employee to be reimbursed for such expense(s);
- Regardless of the nature of the phone call made on a City owned cell phone (business or incidental personal purpose), all employees shall not initiate a telephone call while driving a motor vehicle or operating equipment;
- Employees who receive a phone call while driving a motor vehicle or operating equipment are required to stop the vehicle and/or equipment in a safe location so that communication is held while the vehicle is stopped;
- "Hands-free" technology is acceptable, provided it does not interfere with the safe operation of the vehicle;
- This section does not apply to employees who are passengers in a motor vehicle;
- Public safety (Police and Fire) employee use of City owned cellular telephones while driving a motor vehicle shall be governed by departmental policy.

**E. Management Responsibilities**

Department heads and/or their designees are responsible to ensure all employees are aware of, acknowledge and sign the telephone usage policy, as well as the following responsibilities:

- Ensure employee compliance with the policy;
- Address inappropriate use, abuse or failure to adhere to established policies. Inappropriate use of cellular phones shall be reported to the respective department head and/or designee;
- Employees found to be in violation of this policy shall be subject to \*disciplinary procedures, as may be deemed appropriate by the department head and/or designee;
- Review telephone bills for irregular calls or unusual usage;
- Collect reimbursements from employees for personal calls;
- Distribute reimbursements to employees for business calls made on personally owned equipment;
- Review and evaluate requests for telephone services and equipment such as cellular phones.

\*This policy is applicable to all employees of the City of Fitchburg. For those employees covered by a Collective Bargaining Unit (CBA), the provisions of the CBA which are subject to negotiation shall prevail over the language in this policy (i.e. discipline). Any changes made to this policy which are subject to Collective Bargaining shall be sent to the appropriate Collective Bargaining Unit prior to implementation.



**City of Fitchburg  
Acknowledgment of Receipt of  
Municipal Telephone Usage Policy**

**Name:** \_\_\_\_\_ **Department:** \_\_\_\_\_

**Job Title:** \_\_\_\_\_

**Cell Phone #:** \_\_\_\_\_ **Serial #:** \_\_\_\_\_

**Make:** \_\_\_\_\_ **Model:** \_\_\_\_\_

I acknowledge receipt of \_\_\_\_\_ cell phone(s) owned by the City of Fitchburg to be used in the course of performing my job.

My signature below acknowledges that I have received and reviewed a copy of the City of Fitchburg Telephone Usage Policy and that this signature sheet will be placed in my personnel file in the Human Resources Department. I understand that I will be held responsible for complying with the provisions of this policy and understand that any actions which are found to violate the terms of this policy may result in disciplinary action\*. I understand that the use of such device is a matter of public record and may be reviewed on a monthly basis by others outside of my department.

I have received, read, and agree to the Telephone Usage Policy provided to me with the device. I fully understand the terms of the procedures and agree to abide by them.

**Phone issued to:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Phone issued by:** \_\_\_\_\_ **Date:** \_\_\_\_\_

\* This policy is applicable to all employees of the City of Fitchburg. For those employees covered by Collective Bargaining Agreements, the provisions of the CBA, which are subject to negotiation prevail over the language in this policy (i.e. discipline). Any changes made to this policy that apply to sections that are subject to collective bargaining, will be sent to the appropriate union prior to implementation.

**Phone returned by:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Phone received by:** \_\_\_\_\_ **Date:** \_\_\_\_\_



**CITY of FITCHBURG**  
**AFSCME/LOCAL 2034**  
**MODIFIED LIGHT/DUTY ASSIGNMENT POLICY**  
**02.12.2018**

1. The terms and provisions of the within modified duty policy will not alter, modify, supersede or exempt the City's statutory rights and obligations.
2. The City reserves the right to modify this policy at the City's sole discretion. The City will provide the Union with advance notice of any proposed modifications. The Union may request in writing to bargain over such proposed changes within 10 calendar days. Otherwise, the City may modify this policy as indicated.
3. Modified duty assignments are intended as temporary in nature, and are provided as alternative work assignments where an employee's physician indicates in writing that the employee is unable to return to said employee's regular position and/or normal duties due to a work-related and non-work related injury.
4. The treating physician's statement is required when requested by the City and therefore will be used to determine suitability for available modified duty assignments, including hours, limitations, and reasonable occupational accommodations, if necessary.
5. All determinations as to suitability and availability of modified duty assignments shall be made by the Department Head or Department Head's designee. Instruction, direction and training, if necessary, will be provided to the employee by the Department Head or Department Head's designee. Hours, location, parking and the like of any modified duty assignment will be provided to the employee prior to beginning said assignment.
6. Employees working a modified duty assignment may be subject to disciplinary action in obvious cases of misconduct including, but not limited to the following and/or other similar inappropriate behavior:
  - failure to appear at scheduled shifts
  - frequent absences
  - insubordination
  - violence

The City retains the power to discipline employees for just cause in accordance with the parties' collective bargaining agreement.

7. If the employee, after a temporary period in modified duty assignment, remains unable to return to full duties in the employee's regular position, the City has the right to implement the City's statutory rights with respect to said employee.
8. The City will not be required to provide the Union with any medical statements or reports. The employee may provide said documents to the Union at employee's sole discretion.

- 121-18. ORDERED THAT: There be and hereby is transferred from within the Water Enterprise Fund, Personal Services Accounts the sum of EIGHT HUNDRED EIGHTY-FOUR DOLLARS (\$884.00) same to be credited to the Water Enterprise Fund, Personal Services Accounts.
- 122-18. ORDERED THAT: There be and hereby is appropriated the sum of NINETY-FIVE THOUSAND AND 00/100 DOLLARS (\$95,000.00) same to be charged against AVAILABLE FUNDS and credited to SCHOOL DEPARTMENT, CAPITAL IMPROVEMENTS for the purpose of completing the audio-video upgrade to the Fitchburg High School Auditorium (\$20,000.00) and of replacing the vacuum pump at the Longsjo School (\$75,000.00)
- 123-18. ORDERED THAT: The City of Fitchburg hereby approves the expenditure of funds from the Util/Fitchburg Gas & Electric Light Co. gift in the approximate amount of \$250,000.00 (TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS) for the purpose of said gift, which is for reconstruction of various streets.
- 124-18. ORDERED THAT: The City of Fitchburg hereby approves the expenditure of funds from the Cumberland Farms, Inc. gift in the approximate amount of \$16,000.00 (SIXTEEN THOUSAND AND 00/100 DOLLARS) for the purpose of said gift, which is for pedestrian signals or any other sidewalk or roadway improvements necessary due to the traffic impact of the proposed Cumberland Farms facility at 479 Electric Avenue.
- 125-18. ORDERED THAT: The City of Fitchburg hereby approves the expenditure of funds from the Commonwealth of Massachusetts. Department of Transportation, Complete Streets grant in the approximate amount of \$219,100.00 (TWO HUNDRED NINETEEN THOUSAND, ONE HUNDRED AND 00/100 DOLLARS) for the purpose of said grant, which is for street and sidewalk improvements in the Upper Common area.

ORDINANCES

- 126-18. AN ORDINANCE: Amending Chapter 3, Article XXIV, S. 3-267 of the City Code by striking the word "nine" and inserting "eleven" in its place, re: Disability Commission.  
(Reference Petition #319-17)

Chapter 3, Article XXIV, §3-267 of the City Code shall be amended by striking the word "nine" and inserting "eleven" in its place.

The resulting §3-267 entitled "Creation of Commission; purpose" shall read as follows:

"There is hereby created and established the Fitchburg Commission on Disability consisting of not fewer than eleven members. The purpose of the Commission shall be to cause the full integration and participation of persons with disabilities in the City of Fitchburg."

Ordinance was passed to a first and second reading and ordered advertised by unanimous vote. 11 members present. Board consists of 11 members.

Petitions

**PETITIONS**

The following Petition was referred to the City Property Committee:

- 127-18. That the City of Fitchburg grants 431 Westminster, LLC, an ingress/egress and parking easement on certain City land:  
431 Westminster, LLC to grant the City an ingress/egress and parking easement on its land, and right to pave and maintain the entire parking area resulting from cross easements;  
Westminster Pond, LLC, to grant the City a drainage easement;  
The City of Fitchburg to grant Westminster Pond, LLC, a drainage easement and right to construct the drainage system depicted in the easements attached.

**EASEMENT DEED**

**SECTION ONE – PARTIES**

**City of Fitchburg** a municipal corporation ("Fitchburg") having its municipal offices at 166 Boulder Drive, Fitchburg, Worcester County, Massachusetts, 01420 acting by and through its Mayor, Stephen L. DiNatale; and

**Westminster Street Pond, LLC**, a Massachusetts Limited Liability Company (hereafter, "Westminster Pond") with a principal address of 431 Westminster Street, Fitchburg Massachusetts, 01420.

The above named parties are referred to collectively as "Parties".

**SECTION TWO – PROPERTY DESCRIPTIONS**

The Parties own adjacent properties on or near Westminster Street in Fitchburg, Massachusetts as depicted and described upon the plan entitled "Land in Fitchburg, Mass. Owned by Westminster Street Pond, LLC July 10, 2017" attached hereto and made a part hereof as Exhibit A ("ANR Plan") recorded in the Worcester North District Registry of Deeds in Plan Book \_\_\_\_ Page \_\_\_\_.

Westminster Pond owns the property identified in Exhibit A as "Lot 1 44,077 Sq.Ft. +/-" ("Westminster Pond Lot").

Fitchburg owns the property identified in Exhibit A as "Parcel 2 100,470 Sq.Ft. +/-" ("City Lot").

The City Lot and the Westminster Pond Lot are hereafter collectively referred to as the "Parcels".

**SECTION THREE – SUMMARY**

To facilitate the development of the City Lot and the Westminster Pond Lot, Fitchburg is granting easements, hereinafter described, over the City Lot for the benefit of the Westminster Pond Lot, and Westminster Pond is granting easements, hereinafter described, over the Westminster Pond Lot for the benefit of Fitchburg.

**SECTION FOUR – THE PLANS**

The boundaries of the easement areas referenced herein are depicted upon the easement plan entitled “Plan of Easements #3, #4 Fitchburg, Mass. Prepared for Westminster Street Pond, LLC April 10, 2018” attached hereto and made a part hereof as Exhibit B and Exhibit C (“Easement Plans”).

**SECTION FIVE – GRANT OF EASEMENT**

Westminster Pond, for consideration paid, and in full consideration of less than \$100.00, grants to the City, with quitclaim covenants, perpetual and appurtenant easements for the Construction Purposes and Drainage Purposes, as those purposes are hereinafter described, over and across Easement #3 on the City Lot and more particularly depicted upon the Easement Plans. These easements shall be appurtenant to and benefit the Westminster Pond Lot.

Fitchburg, for consideration paid, and in full consideration of less than \$100.00, grants to Westminster Pond, with quitclaim covenants, perpetual and appurtenant easements for the Drainage Purposes, as those purposes are hereinafter described, over and across Easement #4 on the City Lot and more particularly depicted upon the Easement Plans. These easements shall be appurtenant to and benefit the Westminster Pond Lot.

**SECTION SIX – PURPOSES**

“**Construction Purposes**”, as used in this Agreement, shall mean the non-exclusive use of the City at its sole cost and expense to install, construct, reconstruct, maintain, repair and access conduits, channels, ducts, fittings, pipes, basins, vaults, and such other structures and infrastructures as may be necessary or appropriate for the installation and maintenance of a surface drainage system as more particularly described in Exhibit C with respect to the Drainage Purposes.

“**Drainage Purposes**”, as used in this Agreement, shall mean the use of the easement areas depicted upon the Easement Plans for a surface drainage system serving both the City Lot and the Westminster Pond Lot in, on, and through the drainage system more particularly depicted on Exhibit C.

**SECTION SEVEN – MAINTENANCE AND CONSTRUCTION**

In the event construction or maintenance is undertaken in the easement areas herein granted, the City agrees, at its sole cost and expense, to complete such construction or maintenance expeditiously, in a safe manner, and in accordance with all applicable requirements of any governmental authority having jurisdiction.

Petitions

SECTION EIGHT – GENERAL PROVISIONS

- (1) Easements, Covenants and Agreements Running with the Land. The easements hereby granted, the restrictions hereby imposed, and the agreements herein contained shall be easements, restrictions and covenants running with the land and shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.
- (2) Governing Law. The terms of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
- (3) Construction. The necessary grammatical changes required to make the provisions of this Agreement apply in the plural sense where there is more than one party, and to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though each case fully expressed.
- (4) Captions. The headings of the several sections contained herein are for convenience of reference only and do not define, limit or construe the contents of such sections.
- (5) Partial Invalidity. If any term(s) or provision(s) of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- (6) Waiver. No waiver of any of the terms or conditions of this Agreement or delay or omission in exercising any rights or remedies as to any defaults under this Agreement shall be binding or effective unless expressed in writing and signed by the party giving such waiver.
- (7) Not a Partnership. Nothing herein contained shall be construed as creating a partnership, joint venture or any other legal relationship of common enterprise between the parties or any one or more of them.
- (8) Facilitation. Each party agrees to perform such further acts and to execute and deliver such further documents as may be reasonably necessary to carry out the provisions of this Agreement and to be consistent herewith.
- (9) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which together shall constitute a single instrument.

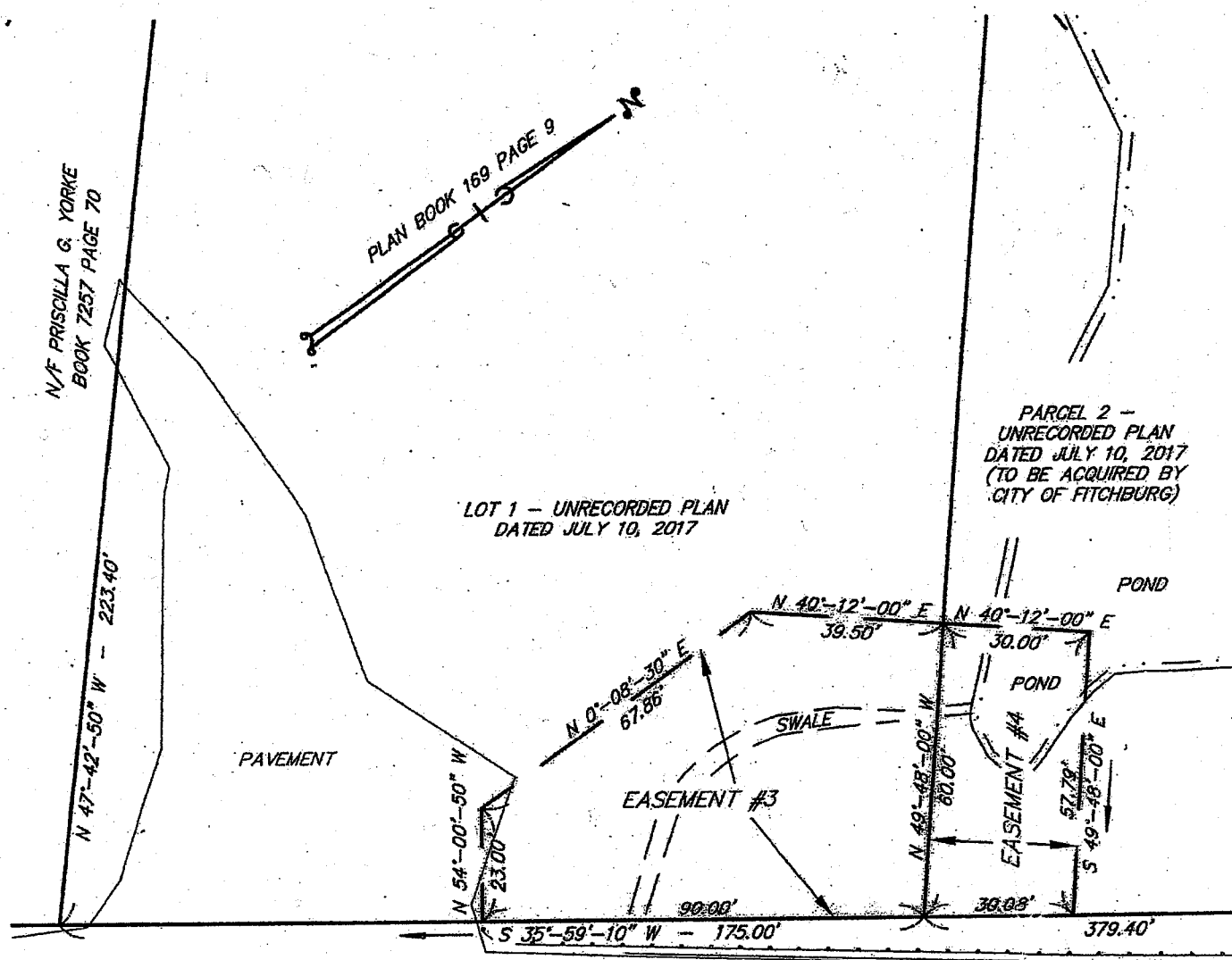
- (10) Authority. Each party executing this Agreement warrants and represents that it is authorized to enter into this Agreement on behalf of its respective corporation and to bind said entity with respect to any transaction contemplated by or occurring under the provisions of this Agreement.
- (11) Westminster Pond Indemnification. Westminster Pond agrees, at its sole cost and expense, to defend, save harmless and indemnify the City, its successors and assigns, from and against any and all claims, suits, liabilities, demands, damages, costs, fees and expenses (including, but not limited to, reasonable attorney's fees and expenses) of whatever nature arising out of the acts, omissions, fault, negligence, misconduct or default of Westminster Pond, its guests, visitors, business invitees, employees, agents, contractors or licensees in connection with Westminster Pond's use of Easement #4 on the City Lot.
- (12) City Indemnification. City, at its sole cost and expense, to defend, save harmless and indemnify Westminster Pond, its successors and assigns, from and against any and all claims, suits, liabilities, demands, damages, costs, fees and expenses (including, but not limited to, reasonable attorney's fees and expenses) of whatever nature arising out of the acts, omissions, fault, negligence, misconduct or default of City, its guests, visitors, business invitees, employees, agents, contractors or licensees in connection with the City's use of Easement #3 on the Westminster Pond Lot.
- (13) This Agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them.

Executed as an instrument under seal the day and year first above written.

By: \_\_\_\_\_  
its \_\_\_\_\_  
hereunto duly authorized

By: \_\_\_\_\_  
its \_\_\_\_\_  
hereunto duly authorized

Petitions



WESTMINSTER STREET

## NOTES:

1. EASEMENT #3 IS ENTIRELY SITUATED ON LOT 1 AND IS INTENDED FOR THE BENEFIT OF PARCEL 2. SEE DEED OF EASEMENT.
2. EASEMENT #4 IS ENTIRELY SITUATED ON PARCEL 2 AND IS INTENDED FOR THE BENEFIT OF LOT 1. SEE DEED OF EASEMENT.
3. DEED REFERENCE: BOOK 8581 PAGE 188 WESTMINSTER STREET POND, LLC
4. PLAN REFERENCES:

PLAN BOOK 169 PAGE 9  
"LAND IN FITCHBURG, MASS. OWNED BY  
WEYERHAEUSER CO.", DATED AUGUST 19,  
1971, BY WILLIAM R. BINGHAM &  
ASSOCIATES

"LAND IN FITCHBURG, MASS. OWNED BY  
WESTMINSTER STREET POND, LLC",  
DATED JULY 10, 2017, BY WHITMAN &  
BINGHAM ASSOCIATES, LLC  
(UNRECORDED)

PLAN OF

EASEMENTS #3, #4

FITCHBURG, MASS.

PREPARED FOR

WESTMINSTER STREET POND, LLC

APRIL 10, 2018



WHITMAN & BINGHAM ASSOCIATES, LLC  
REGISTERED PROFESSIONAL ENGINEERS & LAND SURVEYORS  
510 MECHANIC STREET - LEOMINSTER, MASSACHUSETTS 01453



**FITCHBURG, MASS.**

**PREPARED FOR**

**WESTMINSTER STREET POND, LLC**

**APRIL 10, 2018**



**WHITMAN & BINGHAM ASSOCIATES, LLC**  
REGISTERED PROFESSIONAL ENGINEERS & LAND SURVEYORS  
510 MECHANIC STREET - LEOMINSTER, MASSACHUSETTS 01453

**NOTES:**

1. EASEMENT #3 IS ENTIRELY SITUATED ON LOT 1 AND IS INTENDED FOR THE BENEFIT OF PARCEL 2. SEE DEED OF EASEMENT.

2. EASEMENT #4 IS ENTIRELY SITUATED ON  
PARCEL 2 AND IS INTENDED FOR THE BENEFIT  
OF LOT 1. SEE DEED OF EASEMENT.

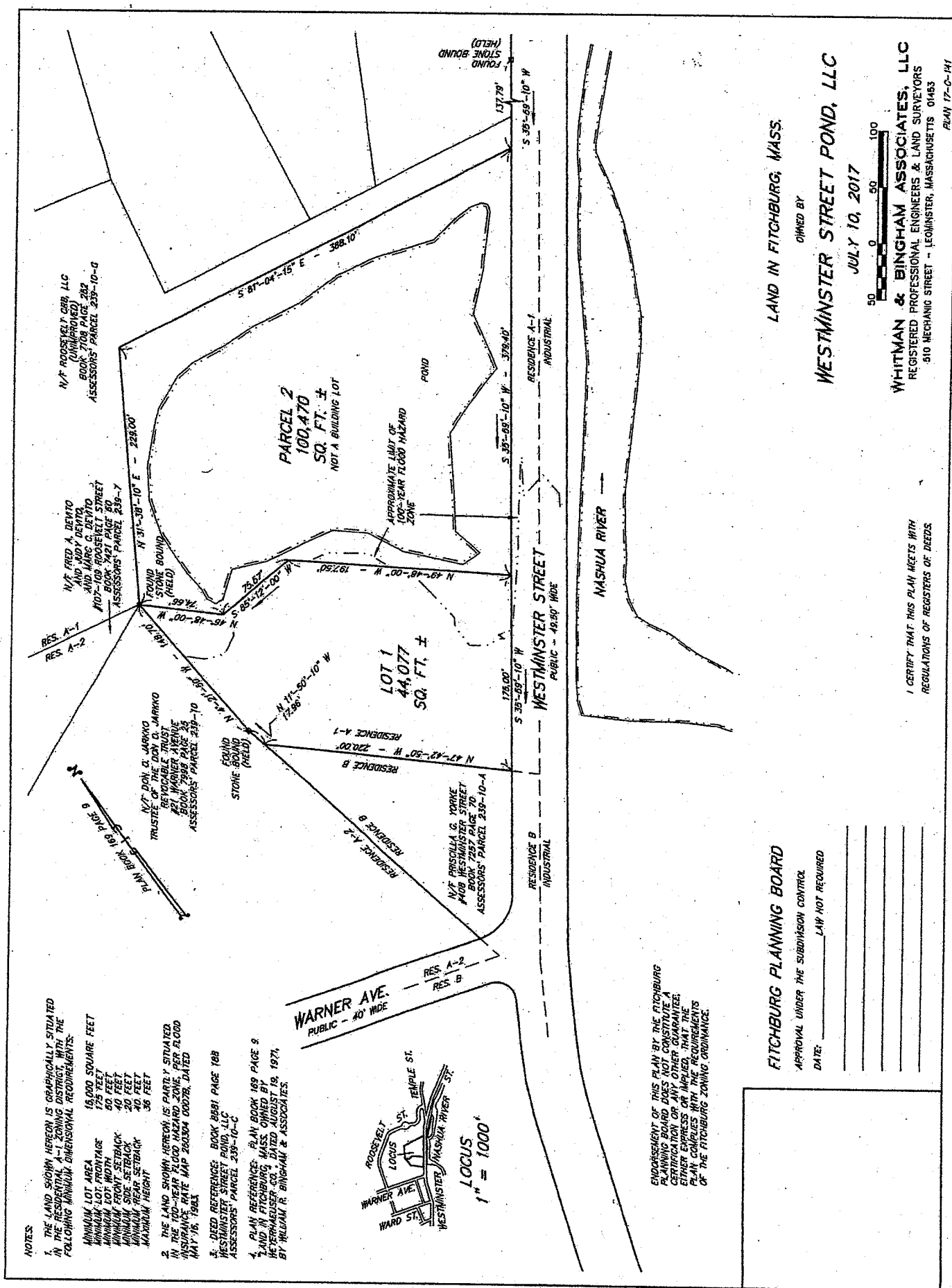
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WESTMINSTER STREET POND, LLC",  
DATED JULY 10, 2017, BY WHITMAN &  
BINGHAM ASSOCIATES, LLC  
(UNRECORDED)**





**EASEMENT DEED**

**SECTION ONE – PARTIES**

**City of Fitchburg** a municipal corporation (“Fitchburg”) having its municipal offices at 166 Boulder Drive, Fitchburg, Worcester County, Massachusetts, 01420 acting by and through its Mayor, Stephen L. DiNatale; and

**431 Westminster St., LLC**, a Massachusetts Limited Liability Company (hereafter, “431 Westminster”) with a principal address of 431 Westminster Street, Fitchburg Massachusetts, 01420.

The above named parties are referred to collectively as “Parties”.

**SECTION TWO – PROPERTY DESCRIPTIONS**

The Parties own adjacent properties on or near Westminster Street in Fitchburg, Massachusetts as depicted and described upon the plan entitled “Plan of Easements #1, #2 Fitchburg, Mass. Prepared for 431 Westminster St. LLC April 10, 2018” (“Easement Plan”) attached hereto and made a part hereof as Exhibit A.

Fitchburg owns the property identified in Exhibit A as “City of Fitchburg Book 5141 Page 257 Parcel 1A Plan Book 465 Page 7” (“City Lot”).

431 Westminster owns the property identified in Exhibit A as “N/F 431 Westminster St. LLC Book 8581 Page 186 Plan Book 169 Page 7” (“431 Westminster Lot”).

The City Lot and the 431 Westminster Lot are hereafter collectively referred to as the “Parcels”.

**SECTION THREE – SUMMARY**

To facilitate the development of the City Lot and the 431 Westminster Lot, Fitchburg is granting easements, hereinafter described, over the City Lot for the benefit of the 431 Westminster Lot, and 431 Westminster is granting easements, hereinafter described, over the 431 Westminster Lot for the benefit of Fitchburg.

**SECTION FOUR – THE PLANS**

## Petitions

The boundaries of the easement areas referenced herein are depicted upon the Easement Plan as "Easement #1" and "Easement #2".

SECTION FIVE – GRANT OF EASEMENT

Fitchburg, for consideration paid, and in full consideration of less than \$100.00, grants to 431 Westminster, with quitclaim covenants, perpetual and appurtenant easements for the Access Purposes and Construction Purposes, as those purposes are hereinafter described, over and across Easement #1 on the City Lot and more particularly depicted upon the Easement Plan. These easements shall be appurtenant to and benefit the 431 Westminster Lot.

431 Westminster, for consideration paid, and in full consideration of less than \$100.00, grants to the City, with quitclaim covenants, perpetual and appurtenant easements for the Access Purposes, as those purposes are hereinafter described, over and across Easement #2 on the City Lot and more particularly depicted upon the Easement Plan. These easements shall be appurtenant to and benefit the City Lot.

SECTION SIX – PURPOSES

"Access Purposes", as used in this Agreement, shall mean the nonexclusive use of the easement area in order to pass and repass on foot or by motor vehicles together with the right to park vehicles for uses associated with the Parcels, as applicable.

"Construction Purposes", as used in this Agreement, shall mean the non-exclusive use of the City Lot to install, construct, reconstruct, maintain and repair paving, striping, curbing, lighting, directional signs, drainage, landscaping or other improvements commonly found in a parking area.

SECTION SEVEN – MAINTENANCE AND CONSTRUCTION

In the event construction or maintenance is undertaken in the easement areas herein granted, 431 Westminster agrees, at its sole cost and expense, to complete such construction or maintenance expeditiously, in a safe manner, and in accordance with all applicable requirements of any governmental authority having jurisdiction.

SECTION EIGHT – GENERAL PROVISIONS

- (1) Easements, Covenants and Agreements Running with the Land. The easements hereby granted, the restrictions hereby imposed, and the agreements herein contained shall be easements, restrictions and covenants running with the land and shall be binding upon and inure to the benefit of

the parties hereto, and their respective successors and assigns.

- (2) Governing Law. The terms of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
- (3) Construction. The necessary grammatical changes required to make the provisions of this Agreement apply in the plural sense where there is more than one party, and to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though each case fully expressed.
- (4) Captions. The headings of the several sections contained herein are for convenience of reference only and do not define, limit or construe the contents of such sections.
- (5) Partial Invalidity. If any term(s) or provision(s) of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- (6) Waiver. No waiver of any of the terms or conditions of this Agreement or delay or omission in exercising any rights or remedies as to any defaults under this Agreement shall be binding or effective unless expressed in writing and signed by the party giving such waiver.
- (7) Not a Partnership. Nothing herein contained shall be construed as creating a partnership, joint venture or any other legal relationship of common enterprise between the parties or any one or more of them.
- (8) Facilitation. Each party agrees to perform such further acts and to execute and deliver such further documents as may be reasonably necessary to carry out the provisions of this Agreement and to be consistent herewith.
- (9) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which together shall constitute a single instrument.
- (10) Authority. Each party executing this Agreement warrants and represents that it is authorized to enter into this Agreement on behalf of its respective corporation and to bind said entity with respect to any transaction contemplated by or occurring under the provisions of this Agreement.
- (11) 431 Westminster Indemnification. 431 Westminster agrees, at its sole cost

Petitions

and expense, to defend, save harmless and indemnify the City, its successors and assigns, from and against any and all claims, suits, liabilities, demands, damages, costs, fees and expenses (including, but not limited to, reasonable attorney's fees and expenses) of whatever nature arising out of the acts, omissions, fault, negligence, misconduct or default of 431 Westminster, its guests, visitors, business invitees, employees, agents, contractors or licensees in connection with 431 Westminster's use and maintenance of Easement #1 on the City Lot.

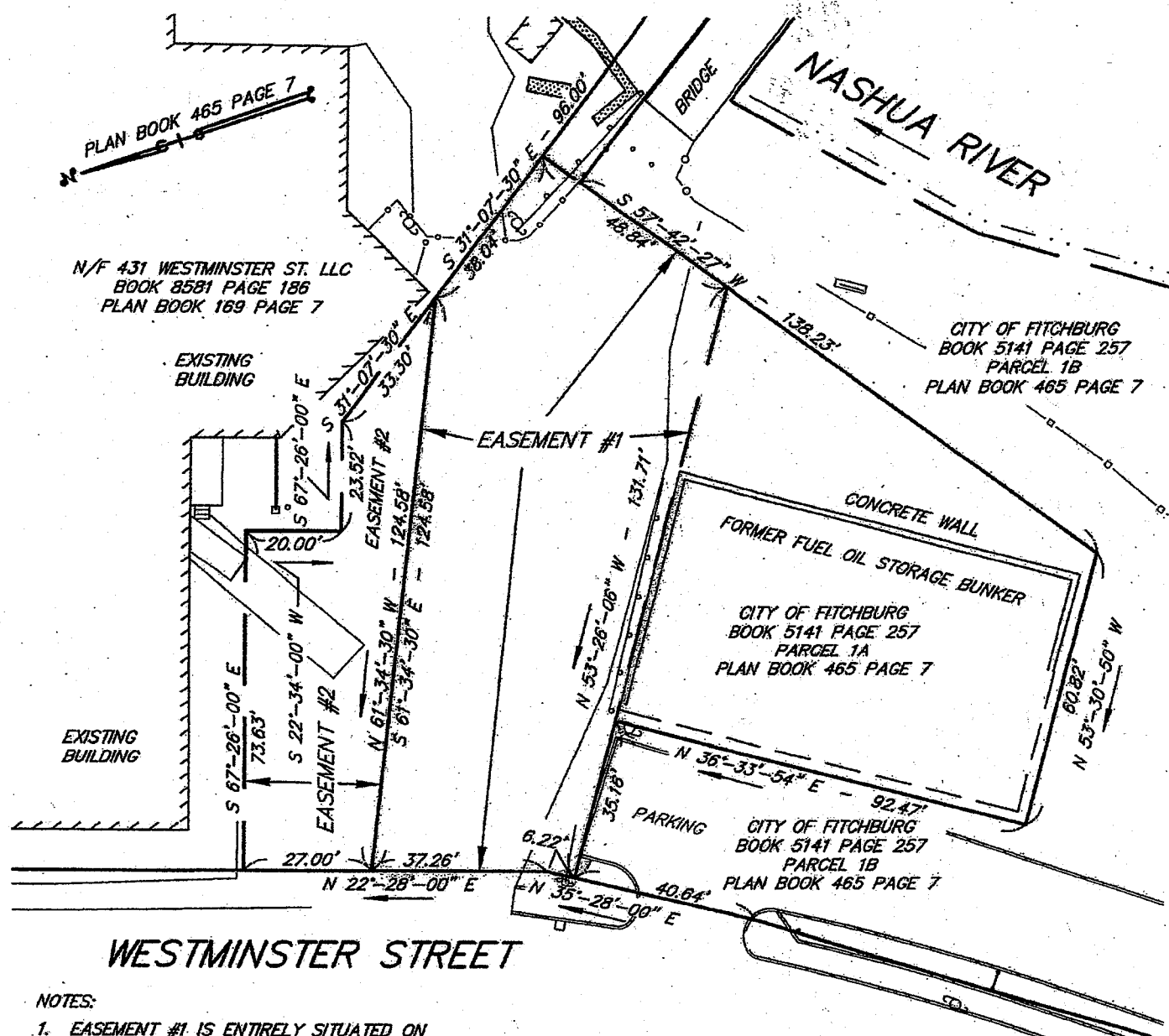
- (12) City Indemnification. City, at its sole cost and expense, to defend, save harmless and indemnify 431 Westminster, its successors and assigns, from and against any and all claims, suits, liabilities, demands, damages, costs, fees and expenses (including, but not limited to, reasonable attorney's fees and expenses) of whatever nature arising out of the acts, omissions, fault, negligence, misconduct or default of City, its guests, visitors, business invitees, employees, agents, contractors or licensees in connection with the City's use of Easement #2 on the 431 Westminster Lot.

- (13) This Agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them.

Executed as an instrument under seal the day and year first above written.

By: \_\_\_\_\_  
its \_\_\_\_\_  
hereunto duly authorized

By: \_\_\_\_\_  
its \_\_\_\_\_  
hereunto duly authorized



NOTES:

1. EASEMENT #1 IS ENTIRELY SITUATED ON LAND OF THE CITY OF FITCHBURG (PARCEL 1A, PLAN BOOK 465 PAGE 7) AND IS INTENDED FOR THE NON-EXCLUSIVE BENEFIT OF 431 WESTMINSTER ST LLC, ABUTTER. SEE DEED OF EASEMENT.

2. EASEMENT #2 IS ENTIRELY SITUATED ON LAND OF 431 WESTMINSTER ST LLC (PLAN BOOK 169 PAGE 7) AND IS INTENDED FOR THE NON-EXCLUSIVE BENEFIT OF THE CITY OF FITCHBURG, ABUTTER. SEE DEED OF EASEMENT.

3. PLAN REFERENCES:

PLAN BOOK 465 PAGE 7  
"PLAN OF LAND IN FITCHBURG, MASS  
PREPARED FOR CITY OF FITCHBURG",  
DATED JUNE 15, 2006, BY WHITMAN &  
BINGHAM ASSOCIATES, LLC.

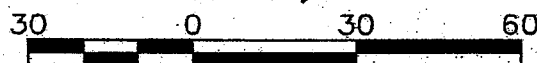
PLAN BOOK 169 PAGE 7  
"LAND IN FITCHBURG, MASS. OWNED BY  
WEYERHAEUSER COMPANY", DATED  
JUNE 9, 1972, BY WILLIAM R. BINGHAM  
& ASSOC.

PLAN OF  
EASEMENTS #1, #2  
FITCHBURG, MASS.

PREPARED FOR

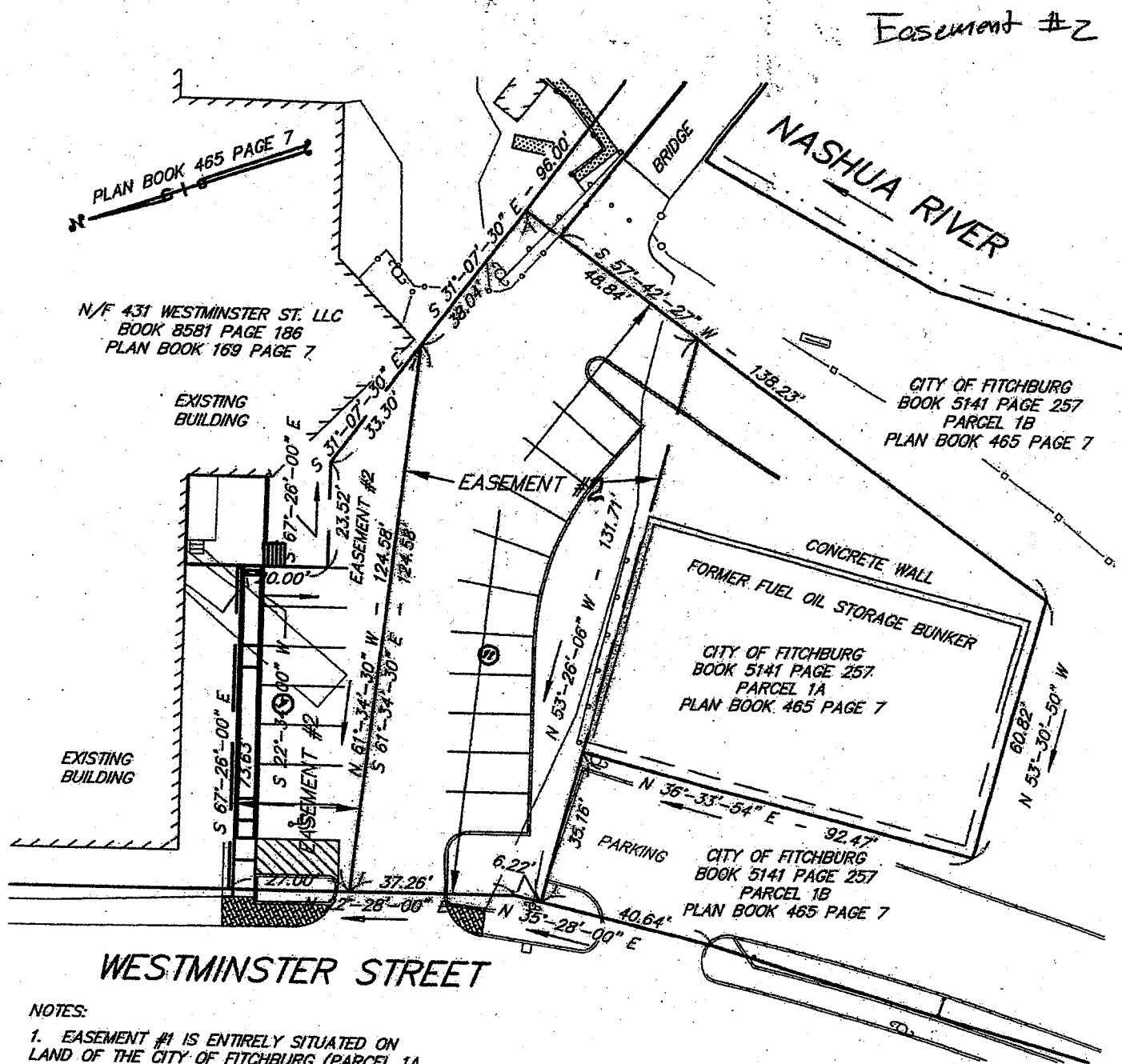
431 WESTMINSTER ST. LLC

APRIL 10, 2018



WHITMAN & BINGHAM ASSOCIATES, LLC  
REGISTERED PROFESSIONAL ENGINEERS & LAND SURVEYORS  
510 MECHANIC STREET - LEOMINSTER, MASSACHUSETTS 01453

Petitions



NOTES:

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& ASSOC.

PLAN OF  
EASEMENTS #1, #2  
FITCHBURG, MASS.

PREPARED FOR

431 WESTMINSTER ST. LLC

APRIL 10, 2018



WHITMAN & BINGHAM ASSOCIATES, LLC  
REGISTERED PROFESSIONAL ENGINEERS & LAND SURVEYORS  
510 MECHANIC STREET - LEOMINSTER, MASSACHUSETTS 01453

000129 - 2018

APPLICATION FOR A LICENSE TO BUY, SELL,  
EXCHANGE OR ASSEMBLE SECOND HAND  
MOTOR VEHICLES OR PARTS THEREOF.

APPLICANT WILL NOT FILL THE FOLLOWING BLANKS

Application No. ....  
Class II License No. ....  
Name One Stop Auto Group, LLC  
St. and No. 91 Laurel Street  
City - Town Fitchburg, MA 01420  
Date Issued In City Council May 1, 2018

Remarks  
The Public Safety Committee recommended the  
petition:  
Be Granted Not Be Granted  
Committee Members sign below:  
.....  
.....  
.....  
.....  
.....  
.....

Petitions

The following Petition was referred to the Legislative Affairs Committee:

128-18. Councillor Elizabeth Walsh, to establish branding guidelines for use of social media by City Council members to avoid Open Meeting Law violations and to provide guidance in promoting a public image for the City of Fitchburg.

The following Petitions were referred to the Public Safety Committee:

129-18. Ralph El Hayek, One Stop Auto Group, LLC, to petition for a Class II Dealer's License to be located at 91 Laurel Street, Fitchburg, MA.



Petitions

## THE COMMONWEALTH OF MASSACHUSETTS

City OF Fitchburg

APPLICATION FOR A LICENSE TO BUY, SELL, EXCHANGE  
OR ASSEMBLE SECOND HAND MOTOR VEHICLES  
OR PARTS THEREOF

I, the undersigned, duly authorized by the concern herein mentioned, hereby apply for a .....  
class license, to Buy, Sell, Exchange or Assemble second hand motor vehicles or parts thereof, in accordance with  
the provisions of Chapter 140 of the General Laws.

1. What is the name of the concern? ONE STOP AUTO GROUP, LLC

Business address of concern. No. 91 LAUREL ST  
FITCHBURG City — Town.

2. Is the above concern an individual, co-partnership, an association or a corporation? LLC

3. If an individual, state full name and residential address.

N/A

4. If a co-partnership, state full names and residential addresses of the persons composing it.

N/A

5. If an association or a corporation, state full names and residential addresses of the principal officers.

President RALPH EL HAYEN 88 NEWDALE HILL RD, LEOMINSTER, MA 011

Secretary "

Treasurer "

6. Are you engaged principally in the business of buying, selling or exchanging motor vehicles? YES

If so, is your principal business the sale of new motor vehicles? NO

Is your principal business the buying and selling of second hand motor vehicles? YES

Is your principal business that of a motor vehicle junk dealer? NO

City of Fitchburg,

May 1, 2018

Petitions

7. Give a complete description of all the premises to be used for the purpose of carrying on the business.

THE MISSION OF ONE STOP AUTO WILL BE TO BUY AND SELL  
A DESIRABLE MIX OF QUALITY USED CARS, TRUCKS  
& VANS. - PREMISES INCLUDE LOT AND GARAGE

8. Are you a recognized agent of a motor vehicle manufacturer?

NO

(Yes or No)

If so, state name of manufacturer

N/A

9. Have you a signed contract as required by Section 58, Class 1?

(Yes or No)

10. Have you ever applied for a license to deal in second hand motor vehicles or parts thereof?

(Yes or No)

If so, in what city — town

Did you receive a license?

(Yes or No)

For what year?

11. Has any license issued to you in Massachusetts or any other state to deal in motor vehicles or parts thereof ever been suspended or revoked?

(Yes or No)

Sign your name in full.

RALPH EL HAYEK

(Duly authorized to represent the concern herein mentioned)

Residence.

88 KENDALL HILL RD, LEOMINSTER,  
MA 01453

#### IMPORTANT

EVERY QUESTION MUST BE ANSWERED WITH  
FULL INFORMATION, AND FALSE STATEMENTS  
HEREIN MAY RESULT IN THE REJECTION OF  
YOUR APPLICATION OR THE SUBSEQUENT  
REVOCATION OF YOUR LICENSE IF ISSUED.

NOTE: If the applicant has not held a license in the year prior to this application, he must file a duplicate of the application with the registrar. (See Sec. 59)

Petitions

APPLICANT WILL NOT FILL THE FOLLOWING BLANKS

Application after investigation .....  
(Approved or Disapproved)

License No. .... granted.....19.... Fee \$.....

Signed.....

CHAPTER 140 OF THE GENERAL LAWS, TER. ED., WITH AMENDMENTS THERETO (EXTRACT)

SECTION 57. No person, except one whose principal business is the manufacture and sale of new motor vehicles but who incidentally acquires and sells second hand vehicles, or a person whose principal business is financing the purchase of or insuring motor vehicles but who incidentally acquires and sells second hand vehicles, shall engage in the business of buying, selling, exchanging or assembling second hand motor vehicles or parts thereof without securing a license as provided in section fifty-nine. This section shall apply to any person engaged in the business of conducting auctions for the sale of motor vehicles.

SECTION 58. Licenses granted under the following section shall be classified as follows:

Class 1. Any person who is a recognized agent of a motor vehicle manufacturer or a seller of motor vehicles made by such manufacturer whose authority to sell the same is created by a written contract with such manufacturer or with some person authorized in writing by such manufacturer to enter into such contract, and whose principal business is the sale of new motor vehicles, the purchase and sale of second hand motor vehicles being incidental or secondary thereto, may be granted an agent's or a seller's license; provided, that with respect to second hand motor vehicles purchased for the purpose of sale or exchange and not tax in trade for new motor vehicles, such dealer shall be subject to all provisions of this chapter and of rules and regulations made in accordance therewith applicable to holders of licenses of class 2.

Class 2. Any person whose principal business is the buying or selling of second hand motor vehicles may be granted a used car dealer's license.

Class 3. Any person whose principal business is the buying of second hand motor vehicles for the purpose of remodeling, taking apart or rebuilding the same, or the buying or selling of parts of second hand motor vehicles or tires, or the assembling of second hand motor vehicle parts, may be granted a motor vehicle junk license.

SECTION 59: The police commissioner in Boston and the licensing authorities in other cities and towns may grant licenses under this section which shall expire on January first following the date of issue unless sooner revoked. The fees for the licenses shall be fixed by the licensing board or officer, but in no case shall exceed \$100. dollars. Application for license shall be made in such form as shall be approved by the registrar of motor vehicles, in sections fifty-nine to sixty-six, inclusive, called the registrar, and if the applicant has not held a license in the year prior to such application, such application shall be made in duplicate, which duplicate shall be filed with the registrar. No such license shall be granted unless the licensing board or officer is satisfied from an investigation of the facts stated in the application and any other information which they may require of the applicant, that he is a proper person to engage in the business specified in section fifty-eight in the classifications for which he has applied, that said business is or will be his principal business, and that he has available a place of business suitable for the purpose. The license shall specify all the premises to be occupied by the licensee for the purpose of carrying on the licensed business. Permits for a change of situation of the licensed premises or for addition thereto may be granted at any time by the licensing board or officer in writing, a copy of which shall be attached to the license. Cities and towns by ordinance or by-law may regulate the situation of the premises of licensees within class 3 as defined in section fifty-eight, and all licenses and permits issued hereunder to persons within said class 3 shall be subject to the provisions of ordinances and by-laws which are hereby authorized to be made. No license or permit shall be issued hereunder to a person within said class 3 until after a hearing, of which seven days' notice shall have been given to the owners of property abutting on the premises where such license or permit is proposed to be exercised. All licenses granted under this section shall be revoked by the licensing board or officer if it appears, after hearing, that the licensee is not complying with sections fifty-seven to sixty-nine, inclusive, or the rules and regulations made thereunder; and no new license shall be granted to such person thereafter, nor to any person for use on the same premises, without the approval of the registrar. The hearing may be dispensed with if the registrar notifies the licensing board or officer that a licensee is not so complying. Any person aggrieved by any action of the licensing board or officer refusing to grant, or revoking a license for any cause may, within ten days after such action, appeal therefrom to any justice of the superior court in the county in which the premises sought to be occupied under the license or permit applied for are located. The justice shall, after such notice to the parties as he deems reasonable, give a summary hearing on such appeal, and shall have jurisdiction in equity to review all questions of fact or law and may affirm or reverse the decision of the board or officer and may make any appropriate decree. The decision of the justice shall be final.

City of Fitchburg, May 1, 2018

Petitions



**Fitchburg, Massachusetts**  
Office of the  
Building Commissioner

MARK BARBADORO  
Building Commissioner

JOHN MORREALE  
Local Building Inspector

MARK SULLIVAN  
Local Building Inspector

KYLE RIDLEY  
Inspector of Wires

WAYNE LITTLE  
Plumbing/Gas Inspector

ERIC CHARTRAND  
Local Building Inspector

March 21, 2018

One Stop Auto Group LLC  
91 Laurel Street  
Fitchburg MA 01420

RE: 91 laurel Street Fitchburg MA, 01420 Map 54 Block 8 Lot 0

Dear applicant

I have reviewed your March 15, 2018 form of intent to change the ownership of a car dealership at 91 Laurel St. The property is located in the Industrial zoning district. Section 181.313 Table of Use Regulations **does not allow a car dealership** within this district. A zoning determination by local inspector Sarah Culgin indicates that special permit # 96-72 was issued which allows motor vehicle sales. Based on this determination your intent to change ownership is approved.

If you have any questions regarding this zoning determination, please feel free to write or call this office.

Any person aggrieved by a Zoning interpretation, order, requirement, direction or failure to act by the Building Commissioner, may file a notice of appeal specifying the grounds thereof, with the City Clerk and the Zoning Board of Appeals. You have thirty days from receipt of this notice to appeal.

Respectfully yours,

Mark Barbadoro  
Building Commissioner

Petitions

Business Certificate Number

79-18

FITCHBURG CITY CLERK

The City of Fitchburg

2018 APR 24 PM 3:28



Massachusetts 01420

In conformity with the provisions of Chapter one hundred and ten, Section five of the General Laws, as amended, the undersigned hereby declare (s) that a business is conducted under the title of

Company  
Name:

ONE STOP AUTO GROUP LLC

Address:

91 LAUREL ST. FITCHBURG, MA 01420

By the following named person (s): (Include Corporate name and Title, If Corporate Officer)

FULL NAMERESIDENCE

RALPH EL HAYEK

88 KENDALL HILL RD  
LEOMINSTER, MA 01453

NOTARIZED SIGNATURES

SIGNATURES:

ON THIS 24<sup>th</sup> DAY OF April, 2018

Before me, the undersigned notary public, personally appeared

Ralph EL Hayek

proved to me through satisfactory evidence of identification which were

MA Driver's License

to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of (his) (her) knowledge and belief.

NOTARY PUBLIC

2-25-2022  
MY COMMISSION EXPIRES

In accordance with the provisions of Chapter 337 of the Acts of 1985 and Chapter 110, Section 5 of Mass. General Laws, Business Certificates Shall be in Effect For Four Years from the date of issue and shall be renewed each four years thereafter. A statement under Oath must be filed with the City Clerk upon discontinuing, retiring or withdrawing from such business or partner ship.

Copies of such Certificates shall be available at the address at which such Business is conducted and shall be furnished on request during regular business hours to any person who has purchased goods or services from such business.

Violations are subject to a fine of not more than three hundred dollars (\$300.) for each month during which such violation continues.

CERTIFICATE EXPIRES:

April 24, 2022

City of Fitchburg, May 1, 2018

Petitions



**City of Fitchburg**  
**OFFICE OF THE TREASURER**

166 Boulder Drive  
Fitchburg, MA 01420

Anne M. Cervantes  
Treasurer/Collector

Date: 4-24-18

Name: USA Auto-Service

Parcel ID: 0054-0008-0

Address: 91 Laurel St

**CERTIFICATE OF TAX COMPLIANCE**

This document signed by the Treasurer certifies that as of the above date, that the above named Applicant is in compliance and in good standing with its tax obligations and fees payable under City code, including real estate, personal property and water and sewer fees and is not a delinquent taxpayer (longer than 12 months outstanding). This Certificate is issued in compliance with Part II, Article 3, Chapter 120, Section 22, Subsection (C) as amended by City Council. This Certificate is required for all original applications and renewal applications for any license or permit, other than those referred to in Section 120-24, and issued by any Department, Officer, Board, or Commission of the City but not limited to Building Permits, Zoning Board Appeals Applicants, Planning Board Applications, and Special Permits.

Very truly yours,

*Anne M. Cervantes*

Anne M. Cervantes  
Treasurer/Collector  
City of Fitchburg

## Petitions

- 130-18. Councillor Amy Green, on behalf of Carol Taylor Kazanjian, to:
1. Request to make the lower end of Romano Avenue a "one way" street.
  2. Widen the intersection of Wanoosnoc Road onto South Street.
  3. Install sidewalks on Canton Street.
  4. Paint double yellow lines on Canton Street to prevent "passing" and slow speeding traffic down.
- 131-18. Councillors Marisa Fleming and Marcus DiNatale, on behalf of Raul and Yeydi Jimenez, to investigate and implement remedies to mitigate and/or prevent property damage to 162 Townsend Street resulting from motor vehicle incidents that frequently damage the property's fencing.

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The following Petitions were referred to the Public Works Committee:

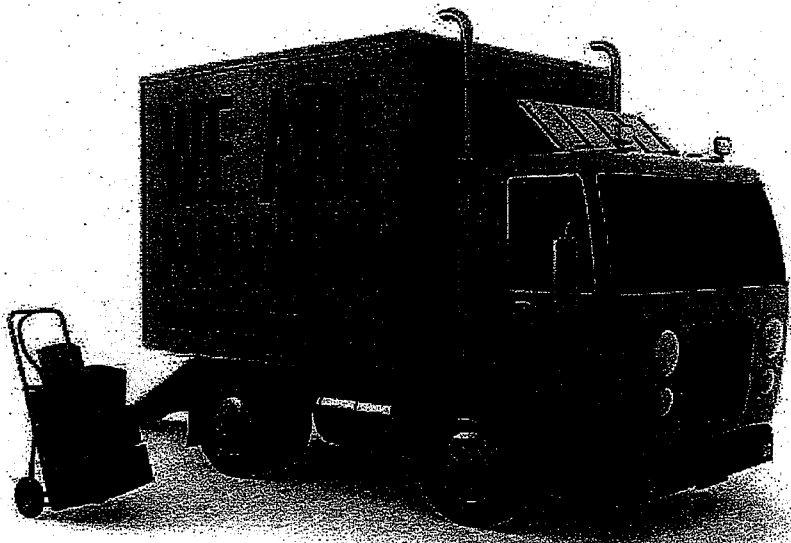
- 132-18. Councillor Paul Beauchemin, to establish a height limit for utility poles in the City of Fitchburg.
- 133-18. Councillor Amy Green, on behalf of Shawn Keating, 23 Munroe Street, to find remedy to mitigate damage happening at a property located at 23 Munroe Street. Damage from snow plows is destroying both the fence & stone wall at this location. Letter is enclosed with the petition.
- 134-18. Councillor Amy Green, on behalf of Jerry & Rose Ann Baldini, 51 Rainville Avenue, to remove dangerous/problematic trees located at 51 Rainville Avenue.
- 135-18. Councillor Elizabeth Walsh, to fill small pothole in road in front of 20 Proctor Ave. and install a berm in front of 20 Proctor Ave.
- 136-18. Councillor Amy Green, on behalf of Sam Erhagbar, 96 Lancaster Street, to request a solution for water damage happening at 96 Lancaster Street.
- 137-18. Councillor Amy Green, on behalf of Carol Russell, 2 Forest park, to request a berm be installed at 2 Forest Park to eliminate property damage being caused by snow removal and water.
-

The following Petition was referred to a Public Hearing  
May 15, 2018:

- 138-18. Fitchburg Gas and Electric, Unitil, to install a new pole location, approximately 190' north of Oak Hill Lane as outlined in the enclosed Petition.



Proudly Serving Fitchburg  
& Surrounding Communities



We have a  
new home!

On April 27th, 2018, Unitil, also known as Fitchburg Gas and Electric Company, is moving to a new location.

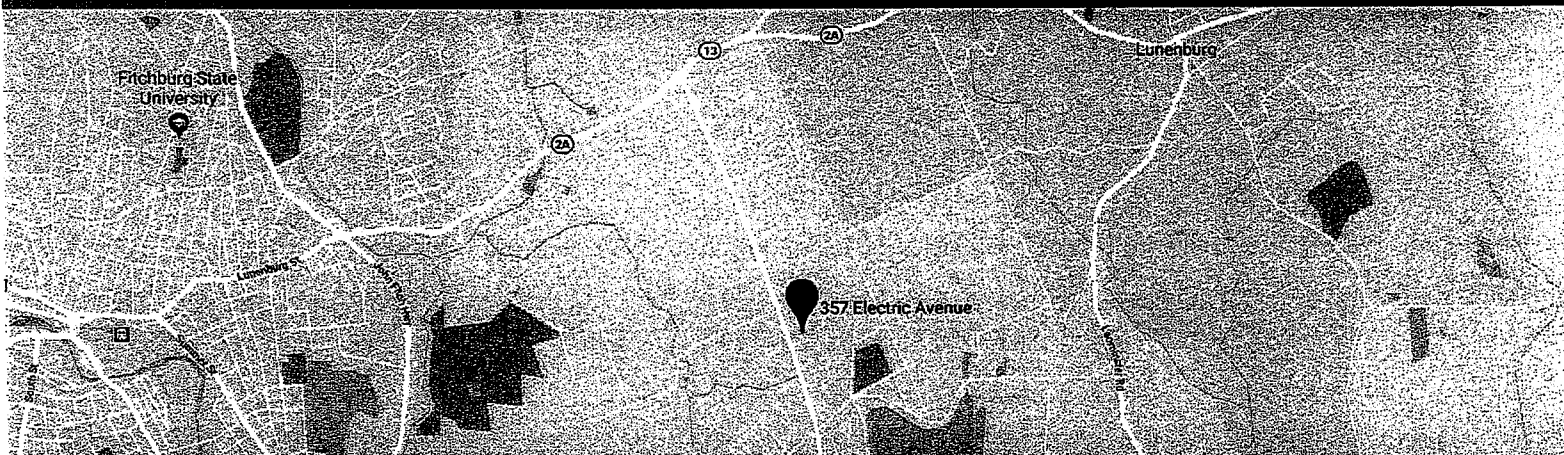
### Our **old** location



285 John Fitch Highway  
Fitchburg, MA 01420

### Our **new** location

357 Electric Avenue  
Lunenburg, MA 01462



Contact Deb Chaput | (603) 773-6526 | chaput@unitil.com



Petitions

**CITY/TOWN COPY**

FITCHBURG CITY CLERK

(Petition for Original Pole Location)

2018 APR 23 AM 11:39

Fitchburg, MA April 13, 2018

To the City Council of the City of Fitchburg:

Unitil, a company incorporated under the laws of the Commonwealth for the transmission of electricity for lighting, heating and power, respectfully ask permission to construct and use a line for such transmission, with the poles and other fixtures necessary to sustain and protect its wires, upon and along the public ways in said City as follows:

OAK HILL RD. - Approximately 190' North of Oak Hill Ln. - 1 proposed new pole location, as shown on pole petition. (Plan No. 3449-L)

And to this end your Honorable Board is hereby requested, after due notice and a public hearing as provided by law, to grant to your petitioner, and its successors and assigns, a location for such line agreeably to the provisions of Chapter 166 of the General Laws and all acts in amendment thereof.

Also for permission to place and maintain underground laterals, manholes, handholes, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as it may desire for distributing purposes.

It is suggested that the poles be located substantially as shown on a plan filed herewith marked "Unitil Proposed Pole Locations in Fitchburg, Plan No. 3449-L, Dated 04/13/2018".

FITCHBURG GAS AND ELECTRIC LIGHT COMPANY

By

Keith Caribo

Manager Electric T &amp; D Operations

City of Fitchburg

2018

Received and filed.

City Clerk

*City of Fitchburg,*

May 1, 2018

Petitions

For City Clerk's Book  
(Copy of Order adopted Granting original Pole Location,  
and Certificate of Notice and Hearing)

City of Fitchburg

IN CITY COUNCIL

ORDERED: That upon petition of Unitil, dated 04/13/18 due notice having been given and a public hearing held as provided by law, permission is hereby given said Company to construct and use a line for the transmission of electricity for lighting, and power, with the poles and other fixtures necessary to sustain and protect its wires, upon and along the public ways in said City as follows:

OAK HILL RD. - Approximately 190' North of Oak Hill Ln. - 1 proposed new pole location, as shown on pole petition. (Plan No. 3449-L)

And to said Company, its successors and assigns, is hereby granted a location for such line, the same to be constructed and maintained in accordance with the Ordinances of said City and with the following

SPECIFICATIONS:

The poles shall be located substantially as shown on a plan filed herewith marked "Unitil Proposed Pole Locations in Fitchburg, Plan No. 3449-L, Dated 04/13/18" hereby referred to and made a part of this order.

Also that permission be and hereby is granted to place and maintain underground laterals, manholes, handholes, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as it may desire for distributing purposes.

I hereby certify that the foregoing order was adopted after due notice and a public hearing as prescribed by Chapter 166 of the General Laws, namely, after a public hearing had been held by the City Council on \_\_\_\_\_ 20, written notice of the time and place of which had been mailed at least seven days prior thereto by me to all owners of real estate abutting upon the ways or parts of ways upon, along or across which the lines are to be constructed under said order, said ownership having been determined by the last preceding assessment for taxation.

City Clerk

Petitions

(Order for Adoption by Granting Original Pole Location)

City of Fitchburg

IN CITY COUNCIL

ORDERED: that upon petition of Unitil dated 04/13/18, due notice having been given and a public hearing held as provided by law, permission is hereby given said Company to construct and use a line for the transmission of electricity for lighting, heating and power, with the poles and other fixtures necessary to sustain and protect its wires, upon and along the public ways in said City as follows:

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(Signed) \_\_\_\_\_ City Clerk

City of Fitchburg,

May 1, 2018

Petitions

For the Company  
(Attested Copies of Order Adopted by Granting  
Original Pole Locations and of Certificate of Notice of Hearing)

City of Fitchburg

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(Copy of Certificate by City Clerk appearing on his record of the foregoing order.)

I hereby certify that the foregoing order was adopted after due notice and a public hearing as prescribed by Chapter 166 of the General Laws, namely, after a public hearing had been held by the City Council on \_\_\_\_\_ 20\_ written notice of the time and place of which had been mailed at least seven days prior thereto by me to all owners of real estate abutting upon the ways or parts of ways upon, along or across which the lines are to be constructed under said order, said ownership having been determined by the last preceding assessment for taxation.

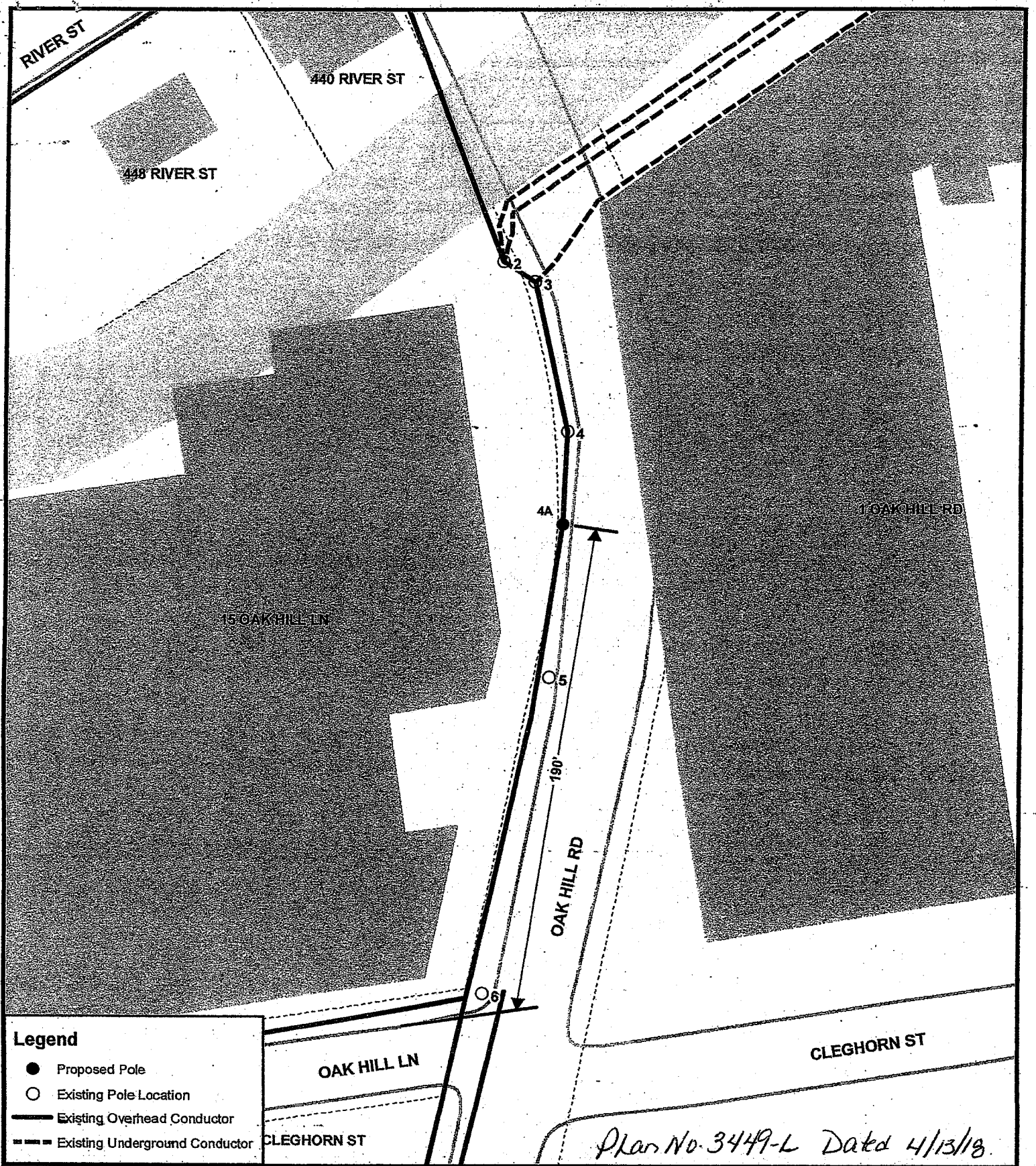
I hereby certify that the foregoing are true copies of (1) an order adopted by the City Council on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_ , and (2) my certificate as to notice and hearing which appears on my official record of said order, and that the original order was duly recorded by me in a book kept exclusively for the purpose of recording such orders.

Attest:

City Clerk

, 20

Petitions



**Legend**

- Proposed Pole
- Existing Pole Location
- Existing Overhead Conductor
- - - Existing Underground Conductor



Drawn  
olsonj  
Date  
4/9/2018

Scale  
1" = 50'



**Unitil**

Pole Petition  
Oak Hill Rd  
Fitchburg, MA

*City of Fitchburg,* May 1, 2018

Petitions

The following Petition was referred to a Public Hearing  
May 15, 2018:

- 139-18. Fitchburg Gas and Electric, Unitil, to install a new pole location, approximately 105' east of Beech Street as outlined in the enclosed Petition.

**CITY/TOWN COPY**

(Petition for Original Pole Location)

Fitchburg, MA April 13, 2018

To the City Council of the City of Fitchburg:

Unitil, a company incorporated under the laws of the Commonwealth for the transmission of electricity for lighting, heating and power, respectfully ask permission to construct and use a line for such transmission, with the poles and other fixtures necessary to sustain and protect its wires, upon and along the public ways in said City as follows:

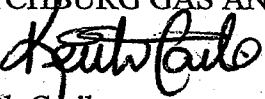
PRATT RD. - Approximately 105' East of Beech St. - 1 proposed new pole location, as shown on pole petition. (Plan No. 3450-L)

And to this end your Honorable Board is hereby requested, after due notice and a public hearing as provided by law, to grant to your petitioner, and its successors and assigns, a location for such line agreeably to the provisions of Chapter 166 of the General Laws and all acts in amendment thereof.

Also for permission to place and maintain underground laterals, manholes, handholes, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as it may desire for distributing purposes.

It is suggested that the poles be located substantially as shown on a plan filed herewith marked "Unitil Proposed Pole Locations in Fitchburg, Plan No. 3450-L, Dated 04/13/2018".

FITCHBURG GAS AND ELECTRIC LIGHT COMPANY

By   
Keith Caribo  
Manager Electric T & D Operations

City of Fitchburg 2018

Received and filed.

City Clerk

Petitions

For City Clerk's Book  
(Copy of Order adopted Granting original Pole Location,  
and Certificate of Notice and Hearing)

City of Fitchburg

IN CITY COUNCIL

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City Clerk

*City of Fitchburg*

May 1, 2018

Petitions

(Order for Adoption by Granting Original Pole Location)

City of Fitchburg

IN CITY COUNCIL

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(Signed) \_\_\_\_\_ City Clerk



## Petitions

For the Company  
(Attested Copies of Order Adopted by Granting  
Original Pole Locations and of Certificate of Notice of Hearing)

City of Fitchburg

## IN CITY COUNCIL

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## SPECIFICATIONS:

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(Copy of Certificate by City Clerk appearing on his record of the foregoing order.)

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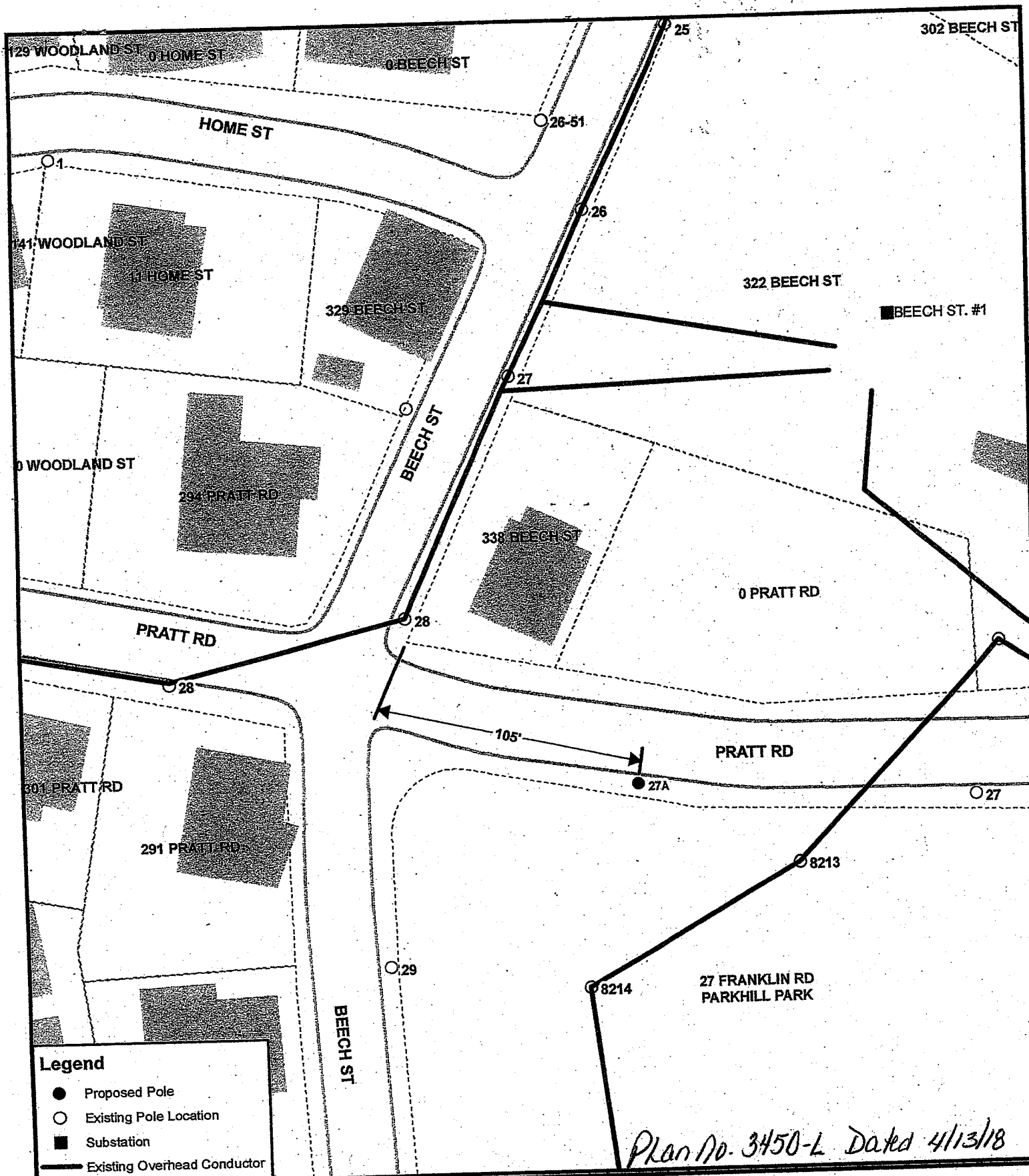
I hereby certify that the foregoing are true copies of (1) an order adopted by the City Council on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_ , and (2) my certificate as to notice and hearing which appears on my official record of said order, and that the original order was duly recorded by me in a book kept exclusively for the purpose of recording such orders.

Attest: \_\_\_\_\_, 20  
City Clerk

City of Fitchburg

May 1, 2018

Petitions



Drawn  
olsonj  
Date  
4/9/2018

Scale  
1" = 50'



Pole Petition  
Pratt Rd At Beech St  
Fitchburg, MA

Tabled

**TABLED**

No action was taken on the following matter:

- 031-18. AN ORDINANCE: **AS AMENDED:**
1. To add a new section 181.65, Marijuana Establishments, to regulate non-medical marijuana as outlined in the enclosed Ordinance.
  2. To amend the definitions of RMD, MMD and MMM in Section 181.10 to remove a requirement that the operator be a non-profit entity as follows.
  3. To add the following Section Regulating signs.
  4. To amend the requirements for site plan review by amending Section 181.9414 as follows.
  5. To amend the prohibited home occupations by adding the following to Section 181.333 (Prohibited Home Occupations)

**CITY OF FITCHBURG**

IN THE YEAR  
2018

2018 APR 12 PM 2:21  
FITCHBURG CITY CLERK

**AN ORDINANCE**

Be it ordained by the City Council of the City of Fitchburg, as follows:

**Section 181.65 - MARIJUANA ESTABLISHMENTS**

**181.651 Regulation.** G.L. c. 94G authorizes a system of state licensing for businesses engaging in the cultivation, testing, processing and manufacturing, and retail sales of non-medical marijuana, collectively referred to as Marijuana Establishments (MEs). G.L. c. 94G §3 allows cities to adopt ordinances that impose reasonable safeguards on the operation of non-medical marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with the law. The special permit and site plan review requirements set forth in this Section shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or local law.

**181.652 Purpose.** The purpose of this ordinance is to allow state-licensed MEs to exist in the City of Fitchburg in accordance with applicable state laws and regulations and impose reasonable safeguards to govern the time, place and manner of ME operations and any business dealing in Marijuana Accessories in such a way as to ensure public health, safety, well-being, and reduce undue impacts on the natural environment as it relates to cultivation, processing and manufacturing subject to the provisions of this Zoning Ordinance, M.G.L. c. 40A, M.G.L. c. 94G and any other applicable law. Therefore, this ordinance may permit MEs in locations suitable for lawful MEs where there is access to regional roadways, where they may be readily monitored by law enforcement for health and public safety purposes, and to minimize adverse impacts on adjacent properties, residential neighborhoods, historic districts, schools, playgrounds and other locations where minors congregate by regulating the siting, design, placement, operation security, and removal of MEs.

This Section is intended to coexist with the existing Section 181.64 regarding MMDs and MMMs.

**181.653 Definitions.** Where not expressly defined in the Zoning Ordinance, terms used in this Zoning Ordinance referring to non-medical use marijuana shall be interpreted as defined in G.L. c. 94G, as the same may be amended from time to time, and regulations issued by the Cannabis Control Commission (CCC). The following definitions, consistent with this expressed intent, shall apply in the interpretation and enforcement of this section:

1. "Marijuana Products", products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for non-medical use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.
2. "Marijuana Establishment" (ME), a Marijuana Cultivator, Independent testing laboratory, Marijuana Product Manufacturer, Marijuana Retailer or any other type of licensed non-medical marijuana-related business.
3. "Marijuana Cultivator" (MC), an entity licensed to cultivate, process and package non-medical marijuana, to deliver non-medical marijuana to ME's and to transfer marijuana to other ME's, but not to consumers. A Craft Marijuana Cultivator Cooperative performing a similar function shall be included within the definition of a MC.
4. "Marijuana Product Manufacturer" (MPM), an entity licensed to obtain, manufacture, process and package non-medical marijuana and marijuana products, to deliver non-

Tabled

medical marijuana and marijuana products to ME's and to transfer non-medical marijuana and marijuana products to other ME's, but not to consumers. A Craft Marijuana Cultivator Cooperative performing a similar function shall be included within the definition of a MPM.

5. "Marijuana Retailer" (MR), an entity licensed to purchase and deliver non-medical marijuana and marijuana products from ME's and to deliver, sell or otherwise transfer non-medical marijuana and marijuana products to ME's and to consumers.
6. "Independent testing laboratory", a laboratory that is licensed by the CCC and is: (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Cooperation mutual recognition arrangement or that is otherwise approved by the CCC; (ii) independent financially from any medical marijuana treatment center or any licensee or ME for which it conducts a test; and (iii) qualified to test marijuana in compliance with regulations promulgated by the CCC pursuant to G.L. c. 94G.
7. "Experienced Operator," any MMD or MMM facilities, as defined by Section 181.64 of the Zoning Ordinance, having already received a special permit and site plan review approval by the City, prior to the passage of Section 181.65 of this Ordinance, which remain in good standing without violation of any ordinance, statute, or condition of their special permit.
8. "Moral Character" means the degree to which a person's history demonstrates honesty, fairness and respect for the rights of others and for conformance to the law, which may include consideration of whether an individual has:
  - a. Ever had a professional license denied, suspended or revoked;
  - b. Ever had a business license denied, suspended or revoked;
  - c. Ever had a marijuana-related business license denied, suspended, revoked, or placed on administrative hold, or was subjected to a fine for violation of a marijuana-related zoning ordinance;
  - d. Ever had a business temporarily or permanently closed for failure to comply with any tax, health, building, fire, zoning or safety law;
  - e. Ever had an administrative, civil or criminal finding of delinquency for failure to file or failure to pay employment, sales, property or use taxes;
  - f. Ever been convicted of a felony, sex offense, or other offense involving violence, distribution of controlled substances, excluding marijuana-related possession offenses, or other moral turpitude;
  - g. Within the previous sixty months been convicted of a misdemeanor or other offense involving the distribution of controlled substances, or driving under the influence of alcohol or other substance (DUI, OUI) convictions

#### **181.654 Prohibitions and Limitations.**

181.6541 It shall be unlawful for any person to operate a ME without obtaining a special permit and undergoing site plan approval pursuant to the requirements of this Ordinance, except as provided for an Experienced Operator.

Tabled

181.6542 An Experienced Operator may operate a ME of the same type as the medical marijuana facility for which they have been granted a special permit and approved site plan review by the City without obtaining a new special permit, provided that the Experienced Operator must receive site plan approval for the new use as a ME, that the ME is located in the same facility for which the Experienced Operator received the prior special permit and site plan approval, and that the gross square footage of such facility is not increased by more than ten (10%) percent.

181.6543 A separate special permit is required for each different ME detailed in section 181.653, above, or in the case of an Experienced Operator, a separate site plan review.

181.6544 As defined in G.L. c. 94G, the number of MRs shall be limited to the amount specified by City ordinance Section 56-3, as the same may be amended from time to time. No special permit may be granted for a MR which results in a violation of this limit.

181.6545 A ME may only be involved in the use permitted by its definition. MRs may only be located in buildings containing other retail, commercial, residential, industrial, or any other uses, including other types of MEs, if the MR is separated by full walls from any and all other uses.

181.6546 Independent Testing Facilities may be permitted under special permit by the Planning Board in the Industrial (I), Light Industrial (LI), Central Business (CBD), Commercial & Automotive (C&A) and Neighborhood Business (NBD) Zoning Districts. MRs may be permitted under special permit by the Planning Board in the Commercial and Automotive (C&A), Medical Services (MSD), Neighborhood Business (NBD), Central Business (CBD), Industrial (I) or Light Industrial (LI) zoning districts in accordance with 181.313 of the Table of Principal Uses, with the exception that no special permit may be granted for any MR located in the portion of the contiguous Central Business Zoning District that includes Main Street which lies to the north of the railroad track dissecting said specific zone. On-site or social consumption, so called, is prohibited as a use. All other MEs may be permitted under special permit by the Planning Board in the Industrial and Light Industrial Zoning Districts.

181.6547 MEs shall be prohibited as an Accessory Use or Home Occupation in all zoning districts. No ME shall be permitted to have drive-up or walk-up facilities as described in Section 181.3246 of this Zoning Ordinance.

181.6548 No marijuana or Marijuana Product shall be smoked, eaten, ingested, consumed or otherwise used within the premises of any ME.

181.6549 No ME may be operated in a mobile facility or outside of a fully enclosed building or structure, excepting deliveries to off-site MRs and home deliveries to consumers permitted or licensed by applicable state and local regulations.

181.65410 No ME may be operated in such a manner as to cause or create a public nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

181.65411 The issuance of a special permit and site plan review pursuant to this chapter does not create an exception, defense, or immunity to any person or entity in regard to any potential

criminal liability the person or entity may have for the production, distribution, or possession of marijuana.

**181.655 Application.**

In addition to the materials required under Section 181.93. (Special Permits) and Section 181.94 (Site Plan Review) of this Ordinance, the applicant shall submit the following:

1. All materials required under Section 181.645 of this Zoning Ordinance for an MMD or MMM facility, with the exceptions that any reference within Section 181.645 to the Department of Public Health or regulations issued thereby shall be interpreted to refer to the CCC and its regulations, or any other state regulation or statute applicable to the ME
2. Proof of approval from the Commonwealth of Massachusetts for the proposed ME by submitting copies of all required registrations, licenses and permits issued to the applicant by the state and any of its agencies for the proposed ME.
3. The name, address, email address, and phone number of all designated Managers of the ME, together with a criminal background check of such Managers and other evidence of Moral Character.
4. Proof that the detailed security plan, operation and management plan, and emergency response plans have been submitted to the Fitchburg Police Department and the Department of Planning and Community Development for comment and review at the same time or prior to the submission of the application, and any comment or response received by the applicant.
5. Proof that the applicant provided notification in writing at the same time or prior to the submission of the application to all property owners and operators of the uses listed under 181.656(5) within three hundred (300) feet of its proposed location and use, to provide them with the opportunity to comment to the Planning Board, as well as any and all comment or response received by the applicant.
6. Evidence demonstrating that the ME will be operated in a responsible manner that does not materially adversely affect the public health, safety or the general welfare of the City or the immediate neighborhood where the ME is located. This may include but shall not be limited to evidence of Moral Character.

181.6551 Upon receipt of a completed application, the Planning Board shall refer copies of the application to the Building Department, Fire Department, Police Department, City Council, Board of Health, Conservation Commission, and the Engineering Division of the Department of Public Works. These boards/departments shall review the application and shall submit their written recommendations. Failure to make recommendations within 30 days of referral of the application shall be deemed lack of opposition.

181.6552 After notice and public hearing and consideration of application materials, consultant reviews, public comments, and the recommendations of other municipal boards and departments, the Planning Board may act upon the application for special permit and approval of site plan.

181.6553 In instances where any portion of a project involves a special permit application to or site plan review by the Planning Board for any ME, the Planning Board shall serve as the special permit granting authority for all other special permits required in connection with such project.

Tabled

**181.656 Special Permit Criteria and Findings**

A MR, MC, MPM or Independent Testing Facility may be permitted pursuant to a Special Permit and Site Plan Review granted by the Planning Board. In granting a special permit for a MR, MC, MPM or Independent Testing Facility, in addition to the general criteria for a special permit in Section 181.93 of the Zoning Ordinance, the Planning Board must also make the following findings:

1. If the special permit is for a MR, that the MR is located in the Commercial & Automotive (C&A), Medical Services (MSD), Neighborhood Business (NBD), Central Business (CBD), Industrial (I) or Light Industrial (LI) zoning districts, excluding the Central Business District which encompasses Main Street; or if the special permit is for an Independent Testing Facility, that the Independent Testing Facility is located in the Industrial (I), Light Industrial (LI), Central Business (CBD) Commercial & Automotive (C&A) or Neighborhood Business (NBD) Zoning District; or if the special permit is for any other ME, that the ME is located in the Industrial or Light Industrial zoning districts in accordance with 181.313 of the Table of Principal Uses.
2. The applicant has demonstrated that the ME has or will meet all of the permitting requirements of all applicable agencies within the Commonwealth and is or will be in compliance with all applicable state laws and regulations, including, but not limited to G.L. c. 94G, §12 General Marijuana Establishment Operation.
3. The applicant has entered into an approved Host Community Agreement under which the applicant pays a host fee or Impact Fee to the City with the Mayor of the City of Fitchburg.
4. The grant of the special permit will not exceed the limitation on permitted MRs set forth in Section 181.6544.
5. The ME is located at least three hundred (300) feet distant of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, a vocational school, a public or private college, junior college, university or dormitory, a licensed child care facility, a library, a playground, a public park, a youth center, a public swimming pool, a video arcade facility, any facility in which minors commonly congregate, or any residence, including commercial residences such as hotels, motels, lodging houses, etc. The distance under this section is measured in a straight line from the nearest point of the property line of the protected uses to the nearest point of the structure of the proposed ME.
  - a. The distance requirement may be reduced by the Planning Board provided that the ME will employ adequate measures to prevent product diversion to minors, and the Planning Board determines that a shorter distance, adequately buffered, will suffice to accomplish the objectives set forth under 181.65.
6. The applicant has satisfied all of the conditions and requirements of this section and other applicable sections of the Zoning Ordinance and any applicable city ordinances.
7. The facility provides adequate security measures to ensure that there are not direct threats to the health or safety of employees, staff, or members of the public and that storage and location of cultivation is adequately secured.
8. The facility will not place an undue burden on public safety services of the City as may be adequately, the Planning Board shall consider the facility's lighting, whether or not all of the facility is visible from a public way, whether or not the parking is contiguous with the facility or the parking arrangements are capable of being monitored by the applicant or the



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- City, and whether or not the facility is or can be set up to promote the effective of Police Department patrols, as well as any other factors affecting public safety.
9. The facility meets all criteria required for a Special Permit for an MMD or MMM under Section 181.645 of this Zoning Ordinance, with the exceptions that
    - a. Any reference within Section 181.645 to the Department of Public Health or regulations issued thereby shall be interpreted to refer to the CCC and its regulations, or any other state regulation or statute applicable to the ME; and
    - b. Location in an area which does not have reasonable access to medical marijuana pursuant to Section 181.644(a) shall not be required.
  10. The applicant has demonstrated, by substantial evidence of Moral Character and other evidence, that it will operate the ME in conformity with all applicable municipal ordinances, state laws and regulations and that its policies and procedures are designed to prevent violation of such laws, particularly including but not limited to Section 181.654 above.
  11. If the application is for a MR, the MR is located at least one thousand (1,000) feet distant of a pre-existing MR. The distance under this section is measured in a straight line from the nearest point of the property line of the existing MR to the nearest point of the structure of the proposed MR.
    - a. The distance requirement may be reduced by the Planning Board provided that the Planning Board determines that a shorter distance, adequately buffered, will suffice to accomplish the objectives set forth under 181.65.

#### **181.657 Site Plan Review/Special Permit Conditions**

The Planning Board shall conduct site plan review and shall impose conditions reasonably appropriate to improve site design, traffic flow, public safety, protect water quality, air quality, and significant environmental resources, preserve the character of the surrounding area and otherwise serve the purpose of this section. In addition to any specific conditions applicable to the applicant's ME, the following conditions shall be included in any site plan review or special permit granted under this Ordinance:

1. All conditions applicable to MMDs and MMMs under Section 181.646 of this Zoning Ordinance shall be applied to an ME, with the exceptions that
  - a. Any reference within Section 181.646 to the Department of Public Health or regulations issued thereby shall be interpreted to refer to the CCC and its regulations, or any other state regulation or statute applicable to the ME;
  - b. Hours of operation shall be set forth within the special permit, and shall generally be consistent with those for package stores licensed under G.L. c. 138.
  - c. The provisions regarding signage contained in Section 181.646(f) and (g) shall not be included; and
  - d. The provisions revoking a special permit for cultivation or dispensing of marijuana for non-medical purposes in Section 181.646(p) shall not be applicable.
2. All business signage shall be subject to the requirements to be promulgated by the CCC and the requirements of Section 181.53 of this Zoning Ordinance.
3. The ME shall not violate any provision of the Zoning Ordinance, including but not limited to Section 181.654 above.
4. Display of marijuana, Marijuana Products and Marijuana Accessories shall be limited to an area which is accessible only by persons aged twenty-one (21) years or older, and the



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applicant shall establish such controls and monitoring as are necessary to ensure that this area is not accessed by persons under the age of twenty-one (21) years.

5. The ME shall regularly verify to the City its efforts to ensure the health, safety, and well-being of the public, and to limit undue impacts on the natural environment, by the use of high efficiency equipment to limit energy and water usage demand, by the purchase of renewable energy credits, by the use of LED lighting equipment, by the prohibition or limitation of pesticides, insecticides and similar chemicals, and by any other methods designed to further this purpose.
  - a. The Planning Board may impose specific conditions relating to the preservation or improvement of public safety, including but not limited to lighting, visibility, surveillance, security cameras, parking arrangements, and accessibility for police patrol.
6. ME shall be operated in a responsible manner that does not materially adversely affect the public health, safety or the general welfare of the City or the immediate neighborhood where the ME is located.
7. The applicant has entered into an approved Host Community Agreement under which the applicant pays a host fee or Impact Fee to the City with the Mayor of the City of Fitchburg.

#### **181.658 Termination and Modification**

181.6581 A special permit or site plan approval may be terminated due to violation of any of its conditions. In addition, a special permit or site plan approval shall terminate upon:

1. Failure of the permit holder to commence operations at the ME within twelve (12) months of the date of approval; or
2. Transfer of ownership of the ME without approval of the Planning Board. For these purposes, transfer of ownership shall include any reallocation of ownership or change in business structure which results in a change of its designated representatives or responsible individuals; or
3. Termination of the Host Community Agreement or failure to pay a host fee or Impact Fee under the Agreement to the City.

181.6582 A special permit or site plan approval may be modified by the Planning Board after public hearing. No modification is permitted for a change of location; a special permit holder must submit a new application for a change in location. Any changes in the application materials from the original materials must be submitted with a request for modification. No transfer of ownership, except a transfer to an affiliated entity, shall be permitted for two years after the date of approval of the special permit or site plan review unless required due to the death or disability of an owner. If the special permit holder requests approval of a transfer of ownership, then the holder must submit proof:

1. That the new owner will operate the ME in accordance with the terms of the special permit, as shown by evidence of Moral Character and other substantial evidence; and
2. That all amounts due under the Host Community Agreement have been timely paid and no taxes, fines, penalties, fees, or other charges due to the City are currently unpaid.

#### **181.659 Severability.**

The provisions of this Ordinance are severable. If any provision, paragraph, sentence, or clause of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

TO AMEND THE DEFINITIONS OF RMD, MMD AND MMM IN SECTION 181.10 TO REMOVE A REQUIREMENT THAT THE OPERATOR BE A NON-PROFIT ENTITY, AS FOLLOWS:

181.10 REGISTERED MARIJUANA DISPENSARY (RMD) – Also known as a Medical Marijuana Treatment Center, is an establishment approved and licensed by the Massachusetts Department of Public Health (MDPH) pursuant to 105 CMR 725.000, owned and operated by an **entity** registered under 105 CMR 725.100, that acquires, cultivates, possesses, processes (including development of related products such as marijuana-infused products (“MIPs”), tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. A RMD shall not be eligible as a “non-exempt agricultural use” or as a “non-exempt educational use” and shall only be permitted as allowed in accordance with City of Fitchburg Zoning Ordinance. Further, the following definitions shall apply for the purposes of distinguishing the permitting and regulation of RMD dispensing uses from RMD cultivation uses within this Ordinance:

a) Medical Marijuana Dispensary (MMD) facility – A Registered Marijuana Dispensary that is located off-site from the cultivation/processing facility (and controlled and operated by the same registered and approved **entity** which operates an affiliated RMD) but which serves only to dispense the processed marijuana, related supplies and educational materials to registered Qualifying Patients or their personal caregivers in accordance with the provisions of MDPH regulations 105 CMR 725.000.

b) Medical Marijuana Manufacturing (MMM) facility – A Registered Marijuana Dispensary that is located off-site from the dispensing facility (and controlled and operated by the same registered and approved **entity** which operates an affiliated RMD) but which serves only to cultivate and process marijuana, and marijuana infused products in accordance with the provisions of MDPH regulations 105 CMR 725.000.

TO ADD THE FOLLOWING SECTION REGULATING SIGNS

Add 181.5364

181.5364 Signs for Marijuana Establishments

All signs for Marijuana Establishments shall be in conformity with the provisions of G.L. c. 94G and all applicable federal, state and local regulations, including regulations issued by the Cannabis Control Commission. Temporary and promotional signage for Marijuana Establishments are prohibited.

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TO AMEND THE REQUIREMENTS FOR SITE PLAN REVIEW BY AMENDING SECTION 181.9414 AS FOLLOWS:

181.9414. Siting, construction or expansion of a Registered Marijuana Dispensary (RMD) or Marijuana Establishment (ME).

TO AMEND THE TABLE OF PRINCIPAL USES BY ADDING SECTIONS 181.313D(15), (16) AND (17) and 181.313D(28) AS FOLLOWS:

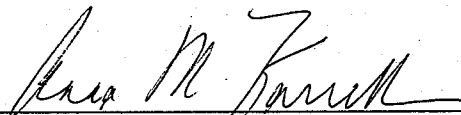
- D15. All Marijuana Establishments (ME), except for Marijuana Retailers (MR). Update chart with SP FOR LI, and I zones by Planning Board (N for all other districts).
- D16. Marijuana Retailers (MR). Update chart with SP FOR C&A, MSD, I, LI, and NBD, "See Ordinance" for CBD (N for all other districts).
- D17. Independent Testing Laboratory. Update chart with SP in I, LI, CBD, C&A and NBD districts (N for all other districts).
- C29. Marijuana Social Consumption Establishment, N for all districts.

TO AMEND THE PROHIBITED HOME OCCUPATIONS BY ADDING THE FOLLOWING TO SECTION 181.333:

181.333 Prohibited Home Occupations:

- Marijuana Establishment (ME) or similar facility
- Registered Marijuana Dispensary (RMD) or similar facility

The meeting adjourned at 8:33 P.M.

  
Anna M. Farrell, Clerk

*City of Fitchburg,*.....

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